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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 160.

THE ONTARIO LAND COMPANY, APPELLANT,

CHARLES H. WILFONG AND MAY A. WILFONG, HIS
WIFE, AND WALTER J. REED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

FILED NOVEMBER 29, 1911.

(21,904.)

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vs.

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FOR THE NINTH CIRCUIT.**

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a No. 1630.

United States Circuit Court of Appeals for the Ninth Circuit.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,
vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

[PRINTED] TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court for the Eastern
District of Washington, Southern Division.

[Endorsed:] Filed Sep. 22, 1908. F. D. Monekton, Clerk U. S.
Circuit Court of Appeals for the Ninth Circuit.

1 *Names and Addresses of Attorneys of Record.*

E. B. Preble, Esquire, North Yakima, Washington, Solicitor for
Complainant.

B. S. Grosscup, Esquire, of Tacoma, Washington, and
Ira P. Englehart, Esquire, of North Yakima, Washington, Solic-
itors for Defendants.

Be it remembered: That on the 19th day of January, 1907, there
was duly filed in the United States Circuit Court for the Eastern Dis-
trict of Washington, Southern Division, a Bill of Complaint in
Equity, Appearance of Complainant's Solicitor, and Præcipe to Issue
Subpœna in Equity, in the case of The Ontario Land Company,
Complainant, vs. Charles H. Wilfong and others, No. 20, in the
words and figures following, to wit:

[Bill of Complaint in Equity.]

The Circuit Court of the United States for the Eastern District of
Washington, Southern Division. In Equity.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

2 To the Honorable Judges of the Circuit Court of the United
States in and for the Eastern District of Washington:

The Ontario Land Company, a corporation duly created, organ-
ized and existing under the laws of the State of Minnesota, and a
citizen of the State of Minnesota, brings this, its bill of complaint,

against the above-named Chas. H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, all of whom are citizens of the State of Washington, and thereupon your orator complains and says:

1. That it now is, and during all the times hereinafter mentioned always has been, a corporation duly created, organized and existing under the laws of the State of Minnesota, and a citizen of the said State of Minnesota, and that the defendants above named, and each of them, during all of said times have been and now are citizens of the State of Washington.

2. That you orator is the owner in fee simple of the following described real estate, situate in Yakima County, State of Washington, under a patent from the United States and a conveyance by the patentee thereof, and a mesne conveyance, to wit: all of blocks three and four (3 & 4) in Heerman's Addition to North Yakima, according to the official plat thereof on file and of record in the office of the County Auditor of said County except only lots one, two and three in block three and lots three, five, seven and eight in block four of said Heerman's Addition, according to said plat, and that said real estate so owned is of great value, and is now of the value of more than twenty-two thousand (\$22,000.00) dollars.

3. That the aforesaid Heerman's addition wherein the land of your orator is situated as aforesaid was plat-ed over and covered that certain tract or parcel of land lying and being in the Capitol Addition to North Yakima, according to the recorded plat thereof, which was on the said plat of Capitol Addition marked and designated by the word "Reserved," the exact location and the surroundings of which said "Reserved" tract of land will more fully appear by reference to the official plat of said Capitol Addition, a true and exact copy of which is marked Exhibit "A," attached to this bill of complaint and made a part thereof, with the same force and effect as if the whole of said plat or map was incorporated in this allegation. That said plat of Capitol Addition was duly recorded, as aforesaid, on the 27th day of May, 1889, in Book "A" of Plats, on page 29.

4. That the plat of said Heerman's Addition, covering the aforesaid "Reserved" tract of land, was duly recorded in the office of the County Auditor of said County, on the 8th day of December, A. D. 1904, in Book "A" of Plats, on page 116, and that ever since the execution and recording of said plat of Heerman's Addition the lands embraced within the aforesaid "Reserved" tract of land have never been otherwise known or designated than by lots and blocks, according to the recorded plat of said Heerman's Addition; and that prior to the execution and recording of said plat of Heerman's Addition the aforesaid "Reserved" tract of land in said Capitol

4 Addition was never in any manner known or designated by any other name or designation except by the aforesaid words "Reserved."

5. That in the year 1901, Yakima County, State of Washington, commenced certain pretended tax foreclosure proceedings, in the Superior Court of Yakima County, wherein said Yakima County, State of Washington, was plaintiff and Edward Whitson and a large

number of other persons were named as defendants, which said proceeding included, among other lands, certain lands described in the application for judgement as blocks 352, 353, 372 and 373 Capitol Addition to North Yakima, which said tax foreclosure proceedings purported to have been commenced and conducted under the laws of the State of Washington, providing for foreclosure of tax liens, which said tax proceedings culminating in judgement and tax deeds hereinafter referred to, were of the character and conducted in the manner hereinafter stated and not otherwise.

6. That such proceedings were had therein that a pretended summons and notice was issued and published in the manner hereinafter stated, against the aforesaid blocks 352, 353, 372 and 373 Capitol Addition to North Yakima, and that thereafter and on the 3d day of September, 1902, a pretended judgement was entered against the aforesaid blocks for the amount of pretended taxes against each of the same, and for the following named years, to wit:

Against Block 352 taxes for 1892-3 for the sum of \$78.74.

Against Block 353 taxes for 1892-3 for the sum of \$76.77.

5. Against Block 372 taxes for 1892-3 for the sum of \$76.77.

Against Block 373 taxes for 1892-3 for the sum of \$76.77.

And it was by said judgement further ord-red and directed that the County Treasurer of said County should sell, according to law, the premises hereinbefore mentioned, viz: Blocks 252, 253, 372, 373, or so much thereof as may be necessary to satisfy the judgment aforesaid.

7. That thereafter, and under the authority of said pretended judgement and in pursuance of said order of sale the county treasurer of said county, on the 13th day of September, 1902, sold block 353 to the defendant Chas. H. Wilfong, and block 373 to the defendant, Walter J. Reed, and thereupon issued and delivered to said defendants, respectively, certain tax deeds in the form provided by law, by the terms of which the aforesaid block 353 was conveyed to the defendant, Chas. H. Wilfong, and block 373 to the defendant, Walter J. Reed, which said deeds were thereupon duly recorded in the office of the county auditor of said county in Book 7 of Deeds, on pages 24 and 25, respectively.

8. That neither this plaintiff nor any person was ever made or named as party defendant in the said tax foreclosure proceeding either in the application for judgement or the tax summons or notice as filed or published, nor in the tax judgement, and that the only designation of the name of the owner of said blocks 352, 372, 353 and

6. 373, throughout the entire tax foreclosure proceedings aforesaid from its beginning to the end was given or designated as "unknown," and that the aforesaid pretended tax judgement was entered by default for want of appearance or answer on the part of any persons as owners or otherwise of said blocks, or any of them, and that neither this plaintiff nor any other person has ever appeared or answered in the said tax foreclosure proceeding.

9. That, as will more fully appear by inspection of the said plat of Capitol Addition to North Yakima, hereto attached as aforesaid, and as a matter of fact, there never were upon said plat or map of said addition any lands or parts of lands or blocks or lots bearing

numbers or in any way designated as blocks 352, 372, 353 and 373, and that there never was upon said map or plat any block or parcel of land to which the description in question, viz: "Blocks 352, 353, 372 and 373 Capitol Addition to North Yakima," could be made to apply; and that said pretended description involved in said tax foreclosure proceedings always was and is utterly null and void on its face, and of no effect, for the reason that it does not describe any part or parcel of land located in Capitol Addition to North Yakima.

10. That notwithstanding the facts aforesaid, the said defendants severally claim to be the owners of said blocks three (3) and four (4) in Heerman's Addition to North Yakima adversely to this plaintiff, under and by virtue of the aforesaid pretended tax judgement and

7 tax deeds upon the pretended ground that said blocks 353 and 373 in Capitol Addition to North Yakima, described in said tax judgement and tax deeds, is the same property as blocks 3 and 4 of Heerman's Addition to North Yakima, of which last named property this plaintiff is the owner, excepting the lots 1, 2, 3, in block 3 and lots 3, 5, 7 and 8, in block 4.

11. That the defendant's claim of title to said blocks in Heerman's Addition rests exclusively upon the aforesaid tax judgement and tax deeds, respectively, and that they claim no adverse rights to plaintiff to said land, except as aforesaid.

12. That the defendant, May A. Wilfong, is the wife of the defendant, Chas. H. Wilfong, and may claim some title adverse to plaintiff by reason of her relationship to said Chas. H. Wilfong; and that said defendant, Walter J. Reed, is unmarried.

13. That at no time since the plat of Capitol Addition to North Yakima, and up to the time that the aforesaid "Reserved" tract was platted as Heerman's Addition to North Yakima, has the aforesaid "Reserved" tract been ever known or designated by any other name than "Reserved," and that no part thereof has ever been conveyed by this plaintiff until after it was platted into Heerman's Addition to North Yakima, and that since the platting thereof as Heerman's Addition to North Yakima, no part of said Heerman's Addition has ever been sold, conveyed or known by any other name or designation except as lots and blocks in said Heerman's Addition to North Yakima.

14. That notwithstanding the facts aforesaid, the said defendants' pretensions and claims of title are based upon the illegal and
8 unconstitutional ground that the aforesaid descriptions in the said tax judgement and deeds were sufficient to identify the property of the plaintiff as being in Heerman's Addition, although at no stage of said pretended tax foreclosure proceedings nor in the assessment-rolls or the certificates of delinquency was there any attempt or pretense to describe or designate any part or portion of your orator's property aforesaid, and that your orator's property was never designated or described from the time of levy of said taxes down to and including said tax deeds.

15. That said pretended claims of said defendants are based upon a certain decision of the Supreme Court of the State of Washington, made and entered therein October 27th, 1903, in an action in which this complainant was plaintiff and one Jay Yordy et al. were defend-

ants, in which said action were involved certain lots of land lying and being in blocks one (1) and two (2) in Heerman's Addition to North Yakima, a copy of which said decision is hereto attached and made a part of this bill of complaint as if the same were incorporated herein.

16. That the decision of the said Supreme Court of the State of Washington aforesaid shows upon its face that the same was based upon pretended principles of law which the Court in that case applied in palpable violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, as will be more fully herein-after set forth, but that said defendants wrongfully and unlawfully claim that the principles laid down in aforesaid decision of said Supreme Court is the law of the State of Washington, and that therefore their aforesaid tax deeds are valid and sufficient to divest your orator of its title to the aforesaid lands.

17. Your orator further alleges and shows that by "the law of the land" in order to constitute a proper and legal notice under the 14th Amendment of the Constitution of the United States (which provides that "No States shall deprive any person of his property without due process of law"), it is necessary that in a tax proceeding in rem (which is the proceeding involved in this case and authorized by the laws of the State of Washington) the description of the property sought to be sold for the taxes must be so full and clear as to disclose to persons of ordinary intelligence without resort to inferences or conjectures what property is thus intended to be taken. That by "the law of the land" the notice and the summons in the tax foreclosure proceedings above referred to and relied upon by defendants is null and void, and therefore the tax judgement and deeds based thereon, for the reason that the pretended description of the property does not describe the property involved in this suit and does not describe any property whatsoever and is void on its face.

18. Therefore, your orator represents and shows that to hold the tax foreclosure judgement and tax deeds aforesaid as valid and effectual to divest your orator of its title to the lands described in this suit, would be to deprive the plaintiff of its property without due process of law, in violation of the 14th Amendment of the Constitution of the United States, and especially of that part of said article which provides that "No state shall deprive any person or his property without due process of law," and your orator further alleges that it hereby claims and relies upon the protection of said provision of said 14th Amendment of the Federal Constitution, and that because of the aforesaid unconstitutional decision of the State Supreme Court, the principles of which, if applies here, may deprive your orator of its property in violation of the said 14th Amendment, your orator invokes the protection of said article in this case, and hereby claims protection thereunder against the pretended claims of said defendants.

19. Your orator further represents that by reason of the facts aforesaid, the said aforesaid tax summons notice, tax judgement and tax deeds involved herein and relied upon by the defendants are repugnant to the aforesaid provision of the 14th Amendment of the

Constitution of the United States, by reason of the fact that your orator's property is not and has never been described or in any manner designated in any of the said proceedings, or at any stage thereof, while the defendants, under the authority of the aforesaid decision of the State Supreme Court, pretend and claim that said tax judgement and tax deeds are valid, and that by reason of the aforesaid decision of the State Supreme Court, they pretend that the said tax notice, judgement and deeds are not repugnant to the said 14th Amendment, and do not deprive your orator of its property without due process of law, as claimed by your orator.

11 20. Further complaining, your orators show that the pretended judgements of September 2d, 1902, made and entered in the Superior Court in and for said Yakima County, in an action in which said Yakima County was plaintiff and said Edward Whitson et al. were named as defendants, hereinbefore referred to, and under sole authority of which said tax sale was held and upon which the said tax deeds of September 13th, 1902, aforesaid, were issued, at all times *was* and now *is* wholly null and void, for the reason that the Superior Court of the said County of Yakima wherein said pretended judgement was given and rendered, never acquired jurisdiction to give, render or enter said judgement, and that said Court was wholly without jurisdiction to render the said judgement or any judgement, as will more fully hereinafter be made to appear, and that by reason of the utter invalidity thereof, the pretended tax deeds, aforesaid, issued pursuant thereto, *is* and always *has* been utterly null and void.

21. Further complaining, your orators show that the only process, notice or summons in said suit to foreclose said tax liens which was ever issued, given, served, or published in said suit, and upon which the judgement aforesaid was founded and entered, omitting descriptions not here involved, was in the words and figures following and not otherwise, to wit:

12 In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

vs.

EDWARD WHITSON et al., Defendants.

Summons for Publication in Foreclosure of Tax Lien.

The State of Washington to Edward Whitson, A. F. Switzer, Maggie N. Miller, and all persons unknown having, or claiming to have, an interest in and to real property hereinafter described:

You and each of you are hereby notified that the County of Yakima, State of Washington, the plaintiff herein, is the holder of Certificate of Delinquency issued on the 31st day of January, 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with the penalty, interest and cost thereon upon real property situate in said County, assessed to the defendants herein for the years and amount hereinafter stated.

No. C D.	Description.	Lot.	Sec. or Tp. or Block.	Years.	Ass'd to—	Amount.
1664.	Cap-tol AD. N. Yakima,		312.	1892-3-4-5.	Carrie M. Reed.	10.33
1665.	Cap-tol AD. N. Yakima,		312.	1892-3-4-5.	Carrie M. Reed.	10.33
1665.	Cap-tol AD. N. Yakima,		312.	1892-3-4-5.	Carrie M. Reed.	10.33
1716.	Cap-tol AD. N. Yakima, fr.		316.	1894.	Unknown owner.	22.64
1717.	Cap-tol AD. N. Yakima, fr.		316.	1894.	Unknown owner.	27
1737.	Ker's Second Ad. to North Yakima.	8	330.	1891-2-3-4-5.	Unknown owner.	27
1851.	Ker's Second Ad. to North Yakima, all of		352.	1892-3.	Unknown owner.	9.02
1852.	Ker's Second Ad. to North Yakima, all of		353.	1892-3.	Unknown owner.	45.35
1912.	Ker's Second Ad. to North Yakima, all of		372.	1892-3.	Unknown owner.	45.37
					Unknown owner.	45.37

14 All of said lands described as being in some city, or addition thereto, being in accordance with the official plat of said city, or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington; and of all the above-described lands being situated in Township and Range North and East of the Willamette Meridian.

All of the said amounts bearing interest at the rate of fifteen per cent per annum from said 31st day of January, 1898, until paid; and you are further notified that the said County of Yakima will apply to the Superior Court of the State of Washington, in and for said County, for a judgement foreclosing its lien against the property hereinbefore mentioned; and you are hereby summoned to appear within sixty days after the first publication of this summons, exclusive of the first day of publication, to wit, within sixty days after the first day of November, 1901, and defend this action or pay the amount due, together with costs; and in case of your failure so to do, judgement will be rendered foreclosing the lien for said Certificate of Delinquency, penalty, interest and costs, against the lands and premises hereinbefore mentioned.

Any pleading or process may be served upon the undersigned at the address hereinafter stated.

W. P. GUTHRIE,

Prosecuting Atty for Yakima County.

Washington, Plaintiff's Attorney.

P. O. Address, North Yakima, Yakima County, Washington.

15 22. That said pretended notice of summons always was and is void on its face, for the reason that it does not contain the specifications of process, notice or summons, in such cases required by the laws of the State of Washington, in force at the time of its issue and publication, and that it wholly fails to conform to the requirements of the statute, either in form or substance.

23. That said pretended summons was never served in any manner upon any person or otherwise than by a pretended publication thereof, in the "Yakima Republic," a weekly newspaper published in North Yakima in said county, the first publication of which was made on November 1st, 1901, and the last on December 13th, 1901, but that prior to said pretended publication neither the said pretended summons nor the application for judgement or complaint for the foreclosure of said tax liens were ever filed in the office of the Clerk of said Superior Court.

24. That no Certificate of Delinquency upon which said pretended foreclosure proceedings were based were ever filed in said court as required by the laws of the State of Washington, and that no complaint or application for judgment was ever filed in said clerk's office until the day of the entry of said pretended judgement.

25. That no notice of sale under said pretended judgement, pursuant to which said tax deeds were given, was ever given or posted as required by law, and that said County Treasurer, at said pretended

16 sale, sold said blocks for the following amounts, to wit: Said block 373 for the sum of \$76.77, and said block 353 for the sum of \$76.77, which was wholly unauthorized by the aforesaid pretended judgement and in excess of the authority given him by said pretended judgement and the laws in force in the State of Washington.

26. That your orator always has been ready, able and willing to do equity in the premises, and to pay all the taxes, interest, penalties and costs against said premises, and is now ready, willing and able to do so, and hereby tenders to do equity and to pay any amount, as the Court may order or require your orator to pay, as a condition of the granting of the complainant's prayer for relief, in redemption of its said property from the taxes, if any, found due, but your orator shows that no amount of taxes for the aforesaid years have ever been assessed or levied upon said land of your orator, and your orator is therefore unable to determine how much was justly due against the aforesaid lands for the aforesaid years 1892 and 1893, and therefore has been unable to pay the same or make any tender thereof; that your orator has always paid all the taxes levied and assessed against said blocks 3 and 4 of said Heerman's Addition for all the years prior to the commencement of this suit, and is ready and willing to pay any amount which the Court might adjudge was justly due against said blocks, if it found that any taxes have ever been levied or assessed against said blocks of land, or which ought to be paid which have not been paid by your orator.

17 27. That notwithstanding all the facts aforesaid and your orator's offer to do equity to said defendants, they and each of them wrongfully and unlawfully claim and pretend that they are the owners in fee simple of the real estate and premises aforesaid, by virtue of said tax deeds adversely to your orator, and ever since the issue to them of said tax deeds have always denied and now deny the right of this orator to redeem said lands from said pretended tax sales.

28. Your orator further says that the aforesaid blocks three and four (3 and 4) in Heerman's Addition, according to the said recorded plat thereof, are each subdivided into distinct lots, separated by streets and alleys, and that each of said blocks consists of sixteen (16) lots, numbered one to sixteen inclusive, as will more fully appear by reference to said plat of Heerman's Addition, your orator further shows that on the 13th of September, 1902, at the time of the execution of said tax deeds to said Chas. H. Wilfong and Walter J. Reed, respectively, your orator was the owner in fee of all the land and real estate covered by and comprising said blocks 3 and 4 in Heerman's Addition, the title thereto having theretofore vested in your orator in virtue of said patent from the United States and said mesne conveyance and your orator having theretofore never conveyed the same or any part thereof. That at sundry and different times subsequent to the execution of said tax deeds to said Wilfong and Reed respectively, your orator, being the owner in fee thereof as aforesaid, sold and by sundry and numerous warranty deeds executed by

- your orator conveyed said lots three (3), two (2), and one (1) in said block 3, and said lots three (3), five (5), seven (7), and eight (8) in said block 4 in said Heerman's Addition to numerous and sundry persons in severalty for and upon numerous and several considerations moving from said several grantees, and aggregating more than two thousand dollars (\$2,000.00), and sold and conveyed the said lots according to said plat of said Heerman's Addition, and that each of said deeds and conveyances whereby said lots were conveyed by your orator as aforesaid contained and contains the usual and full covenants of title, including the usual covenant of an indefeasible seizen in fee, and against encumbrances and of general warranty, and that said grantees respectively of said respective lots are now the owners thereof in fee in virtue of said conveyances. Your orator further shows that all of said sixteen lots in said block three are either wholly vacant and unoccupied by any person, or that your orator is in the actual possession of the same, and each thereof, to wit: each and every of said 16 lots in said block 3 is wholly vacant and unoccupied and not in the actual possession of anyone. Your orator further shows that all of said 16 lots in block 4, except lot 7 therein, are either wholly vacant and unoccupied by any person, or that your orator is in the actual possession of the same, and of each thereof, to wit, each and every of said 16 lots in block 4 is wholly vacant and unoccupied and not in the actual possession of anyone, except that lots 6 and 13 are in the actual possession of your orator, and that lot seven is in the actual possession of one
- 19 A. L. Johnson, being one of the aforesaid grantees of your orator. Your orator further says that your orator, in virtue of said covenants in said deeds of conveyance of said lots executed by your orator as aforesaid, is obligated and bound to its numerous and several grantees to defend in them and to protect and vindicate the respective titles to said respective lots by your orator conveyed to said respective grantees as aforesaid. Your orator further shows that unless, as hereinafter prayed, this Court, by its decree, cancel and remove the said clouds from title of your orator and its said grantees to said blocks three and four (three and four), and decree the said pretended and alleged titles of said defendants respectively to said blocks null and void, and that said defendants have not, nor either of them has, any interest or estate in said blocks or either thereof, or any part thereof, and unless by the decree of this Court as prayed herein, said defendants and each of them be perpetually barred and prohibited from claiming or asserting any interest or estate or claim in said blocks three and four (three and four) or in any part thereof, a great multiplicity of suits and actions at law will ensue from and be based upon the said respective tax deeds and said pretended and alleged titles of said respective defendants to said blocks, and your orator will be irreparably injured and damaged by said tax deeds and pretended titles of said defendants, to wit, each of said numerous grantees and covenantees of your orator to whom, as aforesaid, your orator has conveyed with covenants of title parts of said blocks in severalty will commence and wage against
- 20 your orator an action or actions at law to recover damages upon the said covenants in said respective deeds, and therein

allege against your orator said tax deeds and proceedings upon which the same were issued and said pretended titles of said defendants as breaches of your orator's said covenants, and thereby your orator, at great expense to itself, will be impleaded in numerous actions at law upon its said covenants in which said pretended titles and tax deeds of defendants will be assigned as breaches of said covenants, and your orator will be thereby put to the defense of said numerous actions at law, and will be put to great unnecessary expense and annoyance and vexation in being impleaded in said numerous actions at law, and that said multiplicity of actions at law will be unnecessary annoyances and expense to your orator, and an unnecessary burden to the court in this, to wit: That in each of said actions at law the alleged duties sought to be enforced, and the alleged breaches of said duties and the relief sought will be predicated and grow out of similar facts and transactions and will depend upon the same law or principles of law, to wit, upon the facts and circumstances hereinbefore set forth, in respect of said deeds and covenants and said tax deeds and tax proceedings, and decision of said supreme court and the law and principles of law herein invoked; and that in said several and numerous actions at law your orator, in order to defend itself against the said demands of its said grantees, and in order to protect and vindicate the respective titles by it conveyed as aforesaid, and in

21 order to perform its said covenants, will be obligated to tender and try the said issues, to wit, the issues herein tendered to the great harassment of your orator and to its irreparable injury and damage. That your orator has no remedy at law for the redress of the wrongful claims of said defendants herein set forth, nor for the said multiplicity of vexatious and expensive actions at law impending against your orator in default of the relief in equity in this court herein prayed. That in each of said actions at law similar questions of fact and the same questions of law will arise for determination, and unless the relief hereinbefore prayed in granted by this Court, your orator will be compelled, upon being impleaded as aforesaid by said grantees, to try many times over similar questions of fact and the same questions of law to your orator's vexation and irreparable injury as aforesaid, and an unnecessary burdening of the Court, unless as aforesaid, this Court grant the relief herein prayed against said defendants.

That this Court can, by its one decree herein prayed cancelling and annulling said alleged and pretended titles of said defendants, determine the alleged breaches of said covenants of your orator and thereby avoid said multiplicity of suits that will otherwise arise, and thereby enable your orator to discharge its said duties under said covenants, and to protect and vindicate the titles by it conveyed as aforesaid; that the remedy at law is wholly inadequate, since a Court of law could not take cognizance of the questions herein involved in respect to said vacant and unoccupied lots or those

22 in possession of the plaintiff and could not decide the questions of the breaches of the said covenants because of said tax deed and pretended titles of the defendants, except as one by one they arose in numerous and separate suits, and could not therefore render

adequate relief or decide the whole controversy relating to all of said lots whether vacant or whether conveyed by your orator or otherwise.

In consideration whereof, and for inasmuch as your orator can have no adequate relief, except in this Court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed and may make, a full disclosure and discovery of all matters aforesaid, according to the best and utmost of their remembrance, knowledge, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being expressly waived, and your orator prays that the alleged titles of said defendants and the tax deeds hereinbefore referred to may be decreed to be null and void, and of no force and effect, and that the clouds arising therefrom on the title of your orator may be removed and that your orator be adjudged to be the owner in fee of said property in paragraph numbered 2 herein, alleged to be the property of your orator, free and clear from any claim on the part of the defendants, or either of them, and that the alleged claims of the defendants, and each of them, be adjudged wholly null and void,

and that the defendants have not, and that neither of them
23 has, any estate or interest in said property, to wit, in said blocks three or four, or any part thereof, and that they and each of them be forever barred from asserting or claiming any estate or interest therein, and that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require and as your Honors shall deem meet and proper.

And that said relief be granted upon the condition and that your orator pay to the defendants or into the court for their use such amounts of money in redemption of said lands from said pretended tax sales as may be found by the Court to be justly due for said taxes and interest should it be found that any amount should be paid by your orator.

May it please your Honor to grant unto your orator a writ of subpoena of the United States of America, directed to the defendants, Chas. H. Wilfong and May A. Wilfong, and Walter J. Reed, and to such others as shall in the discretion of your Honors appear necessary to the hearing and determination of this cause, commanding them and each of them on a day certain to appear and answer unto this bill of complaint and abide and perform such order and decree in the premises as to the Court shall seem proper and required by principles of equity and good conscience.

(Signed)

E. B. PREBLE,

Solicitor for Complainant.

(Signed) A. L. AGATIN,

Of Counsel.

24 *Decision of the Supreme Court of State of Washington Referred to in the Bill.*

ONTARIO LAND COMPANY, Respondent,

vs.

JAY TORDY et al., Appellants.

Filed Oct. 27th, 1906.

This action was instituted by the plaintiff, The Ontario Land Company, against the defendants Jay Yordy and Minnie E. Yordy, his wife, to recover possession of certain city lots in North Yakima. It appears that the plaintiff's grantors, Chester A. Congdon and Clara B. Congdon, being owners of the east half of the southwest quarter and the west half of the southeast quarter of section 24, in township 13, north of range 18 E., W. M., except ten acres belonging to one Charles M. Holton, platted the same on May 16th, 1889, as Capitol Addition to North Yakima; that the entire tract above described was apparently platted, with the exception of the Holton ten acres; that through the central portion of the plat, which included a certain body of land marked "Reserved," and hereinafter mentioned, the blocks were consecutively numbered; that where blocks numbered 352, 353, 372, and 373 would have ordinarily appeared, rectangular tract was shown, marked "Reserved," the same being of sufficient size to include four ordinary blocks; that no explanation was afforded, either by the dedication or upon the plat as to what was meant by the term "Reserved," nor was the use to which said tract was to be applied declared; that the assessor of Yakima County listed and appraised for taxation what he described as blocks 352 and 372 in Capitol Addition to North Yakima, Wash., and the same were taxed for the years 1892, 1893, 1894 and 1895; that all taxes for these years became delinquent; that the county foreclosed the same on blocks 352 and 372 of Capitol Addition to North Yakima; that under the foreclosure decree, a tax deed was afterwards issued to the defendant Jay Yordy; that he afterward paid all subsequent taxes levied thereon; that on May 24, 1890, after the said Congdon and wife had platted Capitol Addition, they deeded all of the land therein included to the plaintiff, The Ontario Land Company, but that instead of describing the same by lots and blocks, they conveyed it as to the west half of the southeast quarter and the east half of the southwest quarter of section 24, township 13, north of range 18 E., W. M., excepting therefrom the Holton tract; that in the deed from Congdon and wife to the plaintiff, no allusion whatever was made to Capitol Addition to North Yakima; that on September 22d, 1904, after the tax deed above mentioned had been executed and delivered to defendant Yordy, and had been recorded, the plaintiff, The Ontario Land Company, platted that portion of Capitol Addition marked "Reserved," as "Heerman's Addition to North Yakima," subdividing said reserved tract into four blocks

numbered from 1 to 4 inclusive, each block being subdivided into sixteen lots; that Yordy had then taken possession of a portion of the tract marked "Reserved," claiming the same under his tax deed, and that afterwards the plaintiff, The Ontario Land Company, instituted this action to eject him from certain lots which is described in its complaint as being in Blocks 1 and 2 of Heerman's Addition, making no reference whatever to Capitol Addition, or any part thereof. The trial Court, after making its findings of fact and conclusions of law, entered a decree in favor of plaintiff, awarding it possession, and the defendants have appealed.

The appellants contend that they are entitled under the tax deed to that portion of the land marked "Reserved," which would, by the consecutive system of numbering used in said original Capitol Addition Plat, have constituted blocks 352 and 372; while the respondent insists that it has instituted this action to recover the possession of certain lots in Heerman's Addition to North Yakima, not included in the appellant's tax deed; that the tax deed in no way describes nor does it identify any land included in either Capitol Addition or Heerman's addition. The main issue in this case, therefore, is whether the description of the land as blocks 352 and 372 of Capitol Addition to North Yakima is sufficient in law to give validity to the deed. The evidence shows that the respondent had actual notice and knowledge of the fact that an attempt had been made to levy a tax upon that portion of its property marked "Reserved," and that it not only denied the validity of such taxes, in interviews

with two county treasurers, who called its attention to the case, but also stood quietly by, during the foreclosure proceedings and tax sale, and with full knowledge of the same permitted the appellant York to make his purchase without its taking or making any protest, and that it thereafter platted the reserved tract as Heerman's Addition to North Yakima. It is a well-established principle of law that a description in a deed or other instrument affecting title to real estate is sufficient if it affords an intelligent means for identifying the property, and does not mislead. In other words, if a person of ordinary intelligence and understanding can successfully use the description in an attempt to locate and identify the particular property sought to be conveyed, the description answers its purpose and must be held sufficient. Mr. Jones, at section 323 of his treatise on the law of real property in conveying, says:

"The first requisite of an adequate description is that the land shall be identified with reasonable certainty, but the degree of certainty required is always qualified by the application of the rule that that is certain which can be made certain. A deed will not be declared void for uncertainty if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it was intended to convey. The office of a description is not to identify the land, but to furnish the means of identification. The description will be liberally construed to afford the basis of a valid grant. It is only when it remains a matter of

28 conjecture what property was intended to be conveyed, after resorting to such extrinsic evidence as is 'admissible', that the deed will be held void for uncertainty in the description of parcels."

When real estate is listed and assessed for taxation, it is ordinarily necessary that the assessment-roll shall contain a reasonably accurate description of the tract sought to be taxed. The object of this requirement is stated by writers on taxation and tax titles to be threefold: (1) it is designed to inform the owner of the claim upon his property; (2) it is designed that intending purchasers may know what property will be offered for sale in the event of the taxes becoming delinquent, and (3) it is also the intention that under such description a proper deed may be executed to the purchaser.

Cooley on Taxation (2d ed.), p. 40;

Black on Tax Titles (2d ed.), sec. 112.

The respondent had paid no taxes on the reserved tract for the years included in the foreclosure proceedings, nor does it claim to have done so. The tract was concededly private property subject to taxation. The owner must have known that, under ordinary procedure, it would be assessed under some description. It fails, however, to show any effect upon its part or any desire to learn how or under what description any levy of taxes had been made. The blocks in the Capitol Addition were numbered in such a manner as to indicate that Blocks 352 and 372 would be located on a particular portion of the reserved tract, if such blocks could be construed to exist. The entire plat fails to show any place for block num-

29 bers 352 and 372, so omitted except on the reserved tract.

This tract was in the exact location where such numbers would occur in the regular and consecutive course and system of numbers employed in the plat. There is evidence tending to show that for some time prior to the year 1892, this tract was used as a park by the city of North Yakima; that during said period it was not taxed; but that it was afterwards abandoned by the city. It then became the imperative duty of the county assessor to list it for taxation. He was compelled to do this under some description, so he designated the portion afterwards purchased by the appellant Yordy as blocks 352 and 372 of Capitol Addition to North Yakima. Under all the circumstances, we think this is a sufficient description to identify the property and support the assessment, levy, foreclosure and tax deed. No person of ordinary intelligence could fail to correctly identify the property intended to be taxed and afterwards conveyed, and the respondent could not destroy the sufficiency of the description used, or render it ambiguous by bringing into existence a subsequent and inconsistent description when platting the reserved tract under another name. The entire course of the respondent would seem to have been adapted with a premeditated intention to evade the payment of any taxes whatever upon the reserved tract, although at the time it knew the same was liable to taxation, and no court of justice should adopt any strained rule of construction the result of which would be to aid it in any such enterprise. It could

30 have avoided any threatened cloud on its title or loss of its property by paying the taxes of which it has actual knowledge and for the payment of which it knew it was justly liable. The respondent has undertaken to attack the validity of the foreclosure proceedings, doing so in response to the claim of title pleaded in appellant's answer. We do not think it can do so in this action as it has not tendered the delinquent taxes as required by sec. 5678, Bal.

Ward v. Huggins, 16 Wash. 530;

Merritt v. Corey, 22 Wash. 444.

[Endorsements]: Service of all papers except writs and process in the within entitled cause may be made upon the undersigned E. B. Preble, solicitor for the within complainant at the law office of Preble, Cull and Davis, in the Sloan Building, in North Yakima, in the State of Washington. (Signed) E. B. Preble, Solicitor for Complainant, Ontario Land Company. Bill of Complaint in Equity. Filed January 10th, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

(Here follows diagram marked pp. 31-32.)

CHARTS

TOO

LARGE

FOR

FILMING

33 In the United States Circuit Court for the Eastern District of Washington, Southern Division.

No. 20.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Appearance [of Solicitor for Complainant].

To the Clerk of the Above-entitled Court:

You will please enter my appearance as solicitor for complainant, Ontario Land Company, in the above-entitled cause.

(Signed)

E. B. PREBLE,
Solicitor for Complainant.

[Endorsed]: Appearance of Solicitor for Complainant. Filed Jan. 10th, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

In the Circuit Court of the United States in and for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

C. H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Defendants.

34 *Præcipe [for Writ of Subpœna].*

To the Clerk of the Above-entitled Court:

You will please issue a writ of subpœna out of said court directed to the above-named defendants, Charles H. Wilfong and May A. Wilfong and Walter J. Reed, commanding them, and each of them, to appear and answer unto the bill of complaint of the above-named complainant herein, on the next Rule Day of said court appointed to be held, and perform such order and decree in the premises as to the Court shall seem proper and required by principles of equity.

E. B. PREBLE,
Solicitor for Complainant.

Filed Jan. 10th, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

35 And afterwards to wit, on the 22d day of January, 1907, there was duly filed in said court and cause a subpœna in equity, in the words and figures following, to wit:

[*Subpœna in Equity.*]

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Eastern District of Washington. In Equity.

The President of the United States of America to Charles H. Wilfong and May A. Wilfong and Walter J. Reed, Greeting:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom of said court, in the city of North Yakima, on the fourth day of February, 1907, to answer a bill of complaint filed against you in said court by Ontario Land Company a corporation, a citizen of the State of Minnesota, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said Circuit Court, the 10th
36 day of January, 1907 and in the 131st year of the Independence of the United States of America.

[Seal of Circuit Court.]

FRANK C. NASH, *Clerk*,
By LEE C. DELLE, *Deputy*.*Memorandum Pursuant to Rule 12 Supreme Court U. S.*

You are hereby required to enter your appearance in the above-mentioned suit on or before the first Monday of February next at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

[Seal of Circuit Court.]

FRANK C. NASH, *Clerk*,
By LEE C. DELLE, *Deputy*.UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I hereby certify that I have served the within writ by delivering to and leaving a true copy thereof with Charles H. Wilfong at North Yakima, Wash., and May A. Wilfong at North Yakima, Wash., in Yakima County, this 11th day of January, 1907.

(Signed)

GEO. H. BAKER,
United States Marshal,
By A. N. SHORT, *Deputy*.January 21th, 1907.
Fees: \$6.18.

37 UNITED STATES OF AMERICA,
*State of Washington, Eastern
 District of Washington, ss:*

I do hereby certify and return, that on the 21st day of January, 1907, at North Yakima in the said Eastern District of Washington, I served the within and foregoing and annexed subpoena upon Walter J. Reed, one of the defendants therein named, by then and there leaving a true and complete copy thereof, at and in the dwelling-house and usual place of abode of said Walter J. Reed, with Isabell Steiner, an adult person and a member of and resident in the family then and there being, to wit: by then and there at and in the said dwelling-house and usual place of abode of said Walter J. Reed personally delivering in hand to and leaving with said Isabell Steiner, a sister of said Walter J. Reed, a copy of said subpoena for said Walter J. Reed, said Isabell Steiner then and there being a resident in said house and family and a member thereof.

Dated January 21st, 1907.

(Signed)

GEO. H. BAKER,

U. S. Marshal,

By A. N. SHORT, *Deputy,*

[Endorsed]: Subpoena in Equity. Filed January 22d, 1907.
 Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

38 And afterwards, to wit, on the 2d day of February, 1907, there was duly filed in said court and cause the Appearance of the Defendants, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
 WALTER J. REED, Defendants.

Appearance [of Solicitor for Defendants].

To the Clerk of the Above-entitled Court:

You will please enter my appearance as solicitor for defendants in the above-entitled cause. All pleadings may be served on the undersigned at his office in the 1st National Bank Building, at North Yakima, Wn.

Dated, February 2d, 1907.

(Signed)

IRA P. ENGLEHART,

Solicitor for Defendants.

[Endorsed]: Appearance of Defendants. Filed February 2d, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

39 And afterwards, to wit, on the 2nd day of March, 1907, there was duly filed in said court and cause the Answer of the defendants, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Answer.

These defendants and each of them, jointly and severally, now and at all times hereafter saving to themselves any and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, admit, deny, allege and say:

1.

Admit each and every allegation in paragraph 1 in said complainant's bill of complaint contained.

2.

40 Deny each and every allegation in paragraph 2 in said complainant's bill of complaint contained, except that the real estate therein referred to is of great value and of the value of more than twenty-two thousand (\$22,000.00) dollars.

3.

Deny each and every allegation in paragraph 3 in said complainant's bill of complaint contained.

4.

Deny each and every allegation in paragraph 4 in said complainant's bill of complaint contained.

5.

Deny each and every allegation in paragraph 5 in said complainant's bill of complaint contained, except that in the year 1901 in the County of Yakima, State of Washington, for-closed certain taxes in the Superior Court of Yakima County, Washington, in the case entitled Yakima County, State of Washington, Plaintiff, and Edward Whitson et al., Defendants, and sold blocks 352, 353, 372 and 373 of Capitol Addition to North Yakima, under and by virtue of said proceedings and issued tax deeds for said blocks, and alleged that said tax deeds so issued were good and valid and conveyed a full title to the blocks therein referred to the purchasers thereof.

6.

Deny each and every allegation in paragraph 6 in said complainant's bill of complaint contained, except that a judgment was entered against blocks 352, 353, 372 and 373, Capitol Addition to North

41 Yakima, for the amount of taxes alleged and set forth in paragraph 6 in said complainant's bill of complaint contained, and for the amounts therein stated, and that the County Treasurer of said county sold said blocks 352, 353, 372, and 373, pursuant to said judgment, for said taxes, and allege that said judgment was regular, and that said sale was according to law, and was for taxes due, owing and unpaid on said property for said years, and in the amounts hereinbefore referred to.

7.

Deny each and every allegation in paragraph 7 in said complainant's bill of complaint contained, except that the County Treasurer of Yakima County sold block 353 of Capitol Addition to the defendants Charles H. Wilfong, and block 373 to the defendant Walter J. Reed, and delivered tax deeds therefore, which deeds by their terms conveyed said blocks to the aforesaid respective parties; that said deeds were thereafter duly recorded in the office of the County Auditor of Yakima County, Washington.

8.

Deny each and every allegation in paragraph 8 in said *comokau-babt's* bill of complaint contained.

9.

Deny each and every allegation in paragraph 9 in said complainant's bill of complaint contained.

10.

Deny each and every allegation in paragraph 10 in said complainant's bill of complaint contained, except that said defendants, severally, claim to be the owners of the full, legal title to blocks

42 353 and 373 of Capitol Addition to the city of North Yakima, Yakima County, Washington, and allege that blocks 3 and 4 of Heerman's Addition is a misdescription of said blocks in said Capitol Addition, and is not a legal and valid description of the same.

11.

Deny each and every allegation in paragraph 11 in said complainant's bill of complaint contained, except that defendants claim title to blocks 353 and 373 in Capitol Addition, by virtue of certain tax deeds now held by them.

12.

Admit each and every allegation in paragraph 12 in said complainant's bill of complaint contained.

13.

Deny each and every allegation in paragraph 13 in said complainant's bill of complaint contained.

14.

Deny each and every allegation in paragraph 14 in said complainant's bill of complaint contained.

15.

Deny each and every allegation in paragraph 15 in said complainant's bill of complaint contained, except that they admit that the decision of the Supreme Court of the State of Washington, referred to, is the law, and allege that the claim of said defendants to the full, legal title of said property is based upon the broad principles of law and equity prevailing in the United States of America, and not found in any section of the world which is under the exclusive jurisdiction of the Ontario Land Company, a corporation, or its officers.

43

16.

Deny each and every allegation in paragraph 16 in said complainant's bill of complaint contained, and recognize the fact that the solicitors for the complainant, Ontario Land Company, a corporation, disagree with the Supreme Court of the State of Washington as to what is the law of the land, and state that these defendants, notwithstanding the contrary opinion of solicitors for the Ontario Land Company, a corporation, still have faith and confidence in the integrity and judicial acumen of the Supreme Court of the State of Washington.

17.

Deny each and every allegation in paragraph 17 in said complainant's bill of complaint contained, except that descriptions of property to be sold for taxes, under the laws of the State of Washington must be such as to disclose to persons of ordinary intelligence what property is assessed, and allege the fact to be that said complainant and its officers are persons of superior intelligence.

18.

Deny each and every allegation in paragraph 18 in said complainant's bill of complaint contained.

19.

Deny each and every allegation in paragraph 19 in said complainant's bill of complaint contained, except that defendants claim that the decision of the State Supreme Court is the law and that said defendants, and each of them, jointly and severally agree with the decision of the State Court, referred to by the complainant in his said bill of complaint.

44

20.

Deny each and every allegation in paragraph 20 in said complainant's bill of complaint contained.

21.

Deny each and every allegation in paragraph 21 in said complainant's bill of complaint contained.

22.

Deny each and every allegation in paragraph 22 in said complainant's bill of complaint contained.

23.

Deny each and every allegation in paragraph 23 in said complainant's bill of complaint contained.

24.

Deny each and every allegation in paragraph 24 in said complainant's bill of complaint contained.

25.

Deny each and every allegation in paragraph 25 in said complainant's bill of complaint contained.

26.

Deny each and every allegation in paragraph 26 in said complainant's bill of complaint contained.

27.

Deny each and every allegation in paragraph 27 in said complainant's bill of complaint contained, except that these defendants and each of them claim that they are the owners in fee simple of blocks 353 and 373 of Capitol Addition to North Yakima, Yakima County, Washington, under and by virtue of certain tax deeds, and that they deny the right of the complainant to redeem said lands from them, in any way whatsoever.

45

28.

Deny each and every allegation in paragraph 28 in said complainant's bill of complaint contained.

For a first further and affirmative defense, the defendants allege:

1.

That on the 13th day of September, 1902, and for a number of years prior thereto, the complainant, the Ontario Land Company, a corporation, claimed to be the owner of that certain tract of land referred to by it in its bill of complaint, as blocks 3 and 4 of the alleged addition to North Yakima, designated by said complainant in its bill of complaint as Heerman's Addition to North Yakima, and which blocks were known and designated on the tax list and tax records of Yakima County, Washington, as block- 353 and 373 of

Capitol Addition to North Yakima, Yakima County, Washington; that said blocks are in the east half of the southwest quarter, and the west half of the southeast quarter of section 24, township 13 north, range 18 E., W. M.; that said blocks are laid off and marked with natural bound-ry lines, such as streets and alleys; that they have been during all of the times herein mentioned assessed as such blocks, and are the identical blocks and tracts of land mentioned in said complainant's bill of complaint, and therein attempted to be designated as blocks 3 and 4 of said Heerman's Addition; that said blocks described as aforesaid were, during all the times herein mentioned, sub-

46 ject to taxation under the laws of the State of Washington, and were taxed for State, county and municipal purposes as by the laws of the State of Washington, made and provided for several years prior to the 13th day of September, 1902; that no person paid the taxes on said blocks, and on or about the 3d day of January, 1902, there being a large amount of taxes unpaid and delinquent on said blocks, the County of Yakima, State of Washington, as plaintiff, filed in the office of clerk of Yakima County, Washington, and ex-officio Clerk of this Court, its summons, notice and petition to fore-close the tax lien of said county of Yakima, State of Washington, on said property, which said action is numbered — on the records in the office of said county clerk, and is entitled, Yakima County, State of Washington, Plaintiff, vs. Edward Whitson et al., Defendants, and duly published the same by law made and provided. That thereafter legal proceedings were duly had in said Superior Court, and said Superior Court entered a judgment and decree adjudging and defreeing that the blocks and tracts of land hereinbefore described were subject to taxation, and that certain taxes against said tracts of the land were delinquent for certain prior years, and entered a judgment and decree foreclosing said tax lien, and made an order directing that said property be sold for said unpaid taxes, which said judgment was filed for record in the office of the clerk of the above court and said county clerk on the 2d day of September, 1902, and is recorded in Vol. 1 of Tax Journal at page 520 of the records in the

47 clerk's office of Yakima County, Washington. That thereafter and pursuant to said judgment and decree the Treasurer of Yakima County, Washington, gave notice of sale, and on the 13th day of September, 1902, the above-described tract and blocks of land were sold for said unpaid taxes pursuant to said judgment, decree and order of sale; that said sale was conducted through its duly qualified officers, the then County Treasurer of said county, and at the said sale, the defendants herein, Charles H. Wilfong and Walter J. Reed, purchased the tract and blocks of land herein mentioned and said county treasurer of said county, at said time, made, executed and delivered certain tax deeds conveying said blocks or tracts of land to said defendants, a copy of which said tax deeds, together with the endors-ments thereon, are hereto annexed, marked "Exhibit- A and B," respectively, and made a part of this answer; that said W. B. Dudley was the fully qualified and acting county treasurer of Yakima County, Washington, at the time he made, executed and delivered said deed, and at all the times referred to herein.

2.

That immediately after said deed was executed and delivered to the defendants herein, they filed the same in the office of the County Auditor of Yakima County, Washington, as is more fully shown by the endorsements on said deeds, that after receiving said tax deeds, said defendants claimed and now claim to be the owners of the said blocks of land, under said tax deeds; that they are the owners of said property, and the complainant has no interest therein.

48 For a further and second affirmative defense the defendants herein allege:

1.

That the said complainant had not paid any taxes on said property herein described, or any part thereof, for many years; prior to September 13th, 1902, that it was notified that said property and blocks of land had been assessed as herein alleged, by the proper officers of the County of Yakima, State of Washington, and that there were unpaid taxes on said land, which were a lien thereon, that said complainant was notified that said land was about to be sold, and with full knowledge that no taxes had been paid on said tracts or blocks of land, and that the State, county and municipal taxes thereon were delinquent and with full and actual notice that a decree had been entered for-closing the tax liens hereinabove referred to on said lands, and with full notice that said land would be sold on the 13th day of September, 1902, for said unpaid taxes, and with full notice of all the facts relating to the assessment of said land, the decree of foreclosure thereon for unpaid taxes and the sale thereof, and that said defendants herein were purchasing the same under said decree of the Court and sale, stood by, and with full knowledge, allowed said lands to be sold for said taxes, and never, at any time, or at all, objected to said assessment, entry of said decree of foreclosure, or said sale, and by its conduct acquiesced in said purchase and said sale, and permitted the same to be conducted without making any objection whatsoever. That said complainant is therefore estopped from now attacking the validity of said decree of foreclosure and said sale, and is by reason of its gross negligence in not making known any objections at the time to said for-closure proceedings and said sale, guilty of laches, and is not entitled to any relief in law or equity. That it is, by reason of standing by and permitting said property to be sold for said taxes, estopped from now claiming any interest therein against these defendants.

49 All of which matters and things these defendants are ready and willing to aver, maintain and prove and pray that said action be dismissed as to said defendants, and each of them, and that they have their costs and charges in their behalf most wrongfully sustained, and that the Court make such orders and grant such relief to said defendants, and each of them, as shall be proper and necessary in the premises.

IRA P. ENGLEHART,

Solicitor for Defendants, Charles H. Wilfong,

May A. Wilfong, and Walter J. Reed,

Service accepted and copy received this 2d day of March.

E. B. PREBLE,
Solicitor for Complainant.

Filed March 2d, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

EXHIBIT "A" [TO ANSWER].

STATE OF WASHINGTON,
County of Yakima, ss:

This indenture made this 13th day of September, A. D. 1902, between Wm. B. Dudley, as Treasurer of Yakima County, State of Washington, party of the first part, and C. H. Wilfong, party of the second part:

Witnesseth: That, whereas, at a public sale of real estate held on the 13th day of September, A. D. 1902, pursuant to a real estate tax judgment entered in the Superior Court of the County of Yakima on the 2d day of September, A. D. 1902, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, C. H. Wilfong duly purchased, in compliance with the laws of the State of Washington, the following described real estate, to wit:

All of Block Three Hundred and Fifty-three (353) Capitol Addition to North Yakima, and that said C. H. Wilfong has complied with the laws of the State of Washington necessary to entitle him to a deed for said real estate.

Now, therefore, know ye, that I, Wm. Dudley, County Treasurer of said Yakima County, State of Washington, in consideration of the premises and by virtue of the statutes of the State of Washington, in such cases made and provided, do hereby grant and convey unto C. H. Wilfong, heirs and assigns, forever, the said real estate hereinbefore described.

Given under my hand and seal of office this 13th day of September, A. D. 1902.

[SEAL.]

WM. B. DUDLEY,
County Treasurer.

51 [Endorsed on back as follows:] Filed for Record at the Request of C. H. Wilfong, Sept. 18, A. D. 1902, at 30 min. past 1 P. M., and Recorded in Vol. 7 of Tax Deeds, page 24, Records of Yakima County, Washington.

[SEAL.]

E. E. KELSO,
County Auditor.

EXHIBIT "B" [TO ANSWER].

STATE OF WASHINGTON,
County of Yakima, ss:

This indenture made this 13th day of September, A. D. 1902, between W. B. Dudley, as Treasurer of Yakima County, State of Wash-

ington, party of the first part, and W. J. Reed, party of the second part:

Witnesseth: That, whereas, at a public sale of real estate held on the 13th day of September, A. D. 1902, pursuant to a real estate tax judgment entered in the Superior Court of the County of Yakima on the 2d day of September, A. D. 1902, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, W. J. Reed duly purchased in compliance with the laws of the State of Washington, the following described real estate, to wit:

Lots Thirteen (13) and Fourteen (14) in Block Thirty-two (32), North Yakima; Fractional Lot Sixteen (16) in Block One Hundred and Fifty-one (151) Huson's Addition to North Yakima, and all of Block Three Hundred and Seventy-three (373), Capitol Addition to North Yakima, according to the several plats thereof on file in the office of the County Auditor of said Yakima County, and that said W. J. Reed has complied with the laws of the State of Washington necessary to entitle him to a deed for said real estate.

Now, therefore, know ye, that I, Wm. Dudley, County Treasurer of said Yakima County, State of Washington, in consideration of the premises and by virtue of the statutes of the State of Washington, in such cases provided, do hereby grant and convey unto W. J. Reed, heirs and assigns, forever the said real estate hereinbefore described.

Given under my hand and seal of office this 13th day of September, A. D. 1902.

[SEAL.]

WM. B. DUDLEY,
County Treasurer.

[Endorsed on back as follows:] Filed for Record at Request of W. J. Reed on the 18th day of Sept., 1902, at 45 minutes past 2 o'clock P. M. and Recorded in Vol. 7 of Tax Deeds, page 25, Records of Yakima County, Washington.

[SEAL.]

E. E. KELSO,
County Auditor.

[Endorsed:] Service accepted and copy received, this second day of March.

E. B. PREBLE,
Solicitors for Complainant.

53 And afterwards, to wit, on the 9th day of March, 1907, there was duly filed in said court and cause a stipulation extending time of complainant in which to move against answer of defendants, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG et al., Defendants.

Stipulation [Extending Time of Complainant to File Exceptions to Answer, etc.].

It is hereby stipulated, by and between the above-named complainant and the above-named defendants, acting by their respective solicitors, whose names are hereto subscribed, that the time be, and hereby is, extended to the next Rule day of said Court, appointed by the Rules thereof to be held, to wit: To the 1st day of April, 1907, inclusive, in which the said complainant may, at its option, as it shall be advised, file and serve in said court and cause, exceptions to the answer and defenses of said defendants, or any parts thereof, or move to strike the same from the files, or move to expunge any parts thereof, or otherwise move against the same, or file the general replication thereto, or set said cause down for hearing on bill
54 and answer, or move the Court to be allowed to amend the bill of complaint herein, or otherwise respond to said answer and defenses, or take any one or more of said proceedings. It being the intention hereby to stipulate that complainant may on or before April 1st, 1907, file and serve and take any proceeding or proceedings in said cause that it may be advised to take, with the same effect as if taken or had on or before March 11th, 1907.

Dated at North Yakima, Washington, March 9th, 1907.

(Signed)

E. B. PREBLE,

Solicitor for Complainant.

(Signed)

IRA P. ENGLEHART,

Solicitor for Defendants.

[Endorsed:] Stipulation Extending Time of Complainant to Move Against Answer of Defendants. Filed March 9th, 1908. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

55 And afterwards, to wit, on the 12th day of March, 1907, there was duly filed in said court and cause the replication of complainant in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Replication.

This replicant, Ontario Land Company above named, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the above-named defendants, Charles H. Wilfong, and May Wilfong, his wife, and Walter J. Reed, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied to by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in
56 the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed)

E. B. PREBLE,

Solicitor for Complainant, Ontario Land Company.

Due service by copy of the within Replication upon undersigned solicitor for defendants therein named, at North Yakima, Washington, on this March 12th, 1907, is hereby acknowledged.

(Signed)

IRA P. ENGLEHART,

Solicitor for Defendants.

[Endorsed:] Replication. Filed March 12th, 1908. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

And afterwards, to wit, on the 18th day of March, 1907, there was duly filed in said court and cause an order extending and fixing time of complainant in which to move against answer of defendants, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of
Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG et al., Defendants.

57 *Order [Extending Time of Complainant to File Exceptions
to Answer, etc.].*

Upon the stipulation of the above-named complainant and defendants:

It is now here ordered: That the time be, and hereby is, extended to the next Rule day of said Court appointed to be held by the rules thereof, to wit: The 1st day of April, 1907, inclusive, in which the said complainant may, at its option, as it shall be advised, file and serve in said Court and cause, exceptions to the answer and defenses of said defendants, or any parts thereof, or move to strike the same from the files, or move to expunge any parts thereof, or otherwise move against the same, or file the general replication thereto, or set said cause down for hearing on bill and answer, or move the Court to be allowed to amend the bill of complaint herein, or otherwise respond to said answer and defenses, or take any one or more of said proceedings, as complainant may be advised, and that complainant may, on or before said 1st day of April, 1907, take any proceeding or proceedings in said cause, that it may be advised to take, with the same effect as if taken on or before March 11th, 1907.

(Signed)

C. H. HANFORD, *Judge.*

[Endorsed:] Order Extending Time of Complainant in Which to Move Against Answer of Defendants. Filed March 18th, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

58 And afterwards, to wit, on the 10th day of May, 1907, there was duly filed in said court and cause a stipulation and order appointing Mrs. Lillian Van Brundt, Special Examiner in said cause, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of
Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Stipulation [Appointing Special Examiner, etc.]

It is now here stipulated, by and between the above-named complainant, The Ontario Land Company, acting by its undersigned

solicitor, and the above-named defendant-, Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, acting by their undersigned solicitor herein: That the evidence to be adduced in said cause be taken orally, and that Mrs. Sillian Van Brundt of North Yakima, or any other suitable person, be appointed by said Court a Special Examiner to take the said testimony.

And it is further stipulated: That three months from the date of the entry of the order of the said Court appointing such special examiner be allowed for the taking of testimony in said cause, and that the time for taking testimony in said cause be and hereby is, extended to the expiration of three months from the time of the entry of the Order appointing such Special Examiner.

Dated this 8th day of May, 1907.

E. B. PREBLE,
Solicitor for said Complainant.
IRA P. ENGLEHART,
Solicitor for said Defendants.

Filed May 10th, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Order [Appointing Special Examiner, etc.].

It is now here ordered: Upon the Stipulation of the above-named complainant and of the above-named defendants, that the evidence to be adduced in the above-entitled cause be taken orally, and that Mrs. Lillian Van Brundt of North Yakima, Washington, be, and hereby is, appointed a Special Examiner to take and report the said testimony.

It is further ordered: That three months from the date of the entry of this order be, and hereby is, allowed for the taking of the testimony in said cause, and that the time for the taking of said testimony be, and hereby is, extended to the expiration of said three months.

Done by the Court this 10th day of May, 1907.

C. H. HANFORD, *Judge.*

For record.

Filed May 10th, 1907. Frank C. Nash, Clerk. By Lee C. Delle, Deputy.

And afterwards, to wit, on the 29th day of July, 1907, there was duly filed in said court and cause a Stipulation and order extending time for taking evidence in said case until September 15th, 1907, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 20.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Stipulation [Continuing Taking of Testimony until September 15, 1907, etc.].

It is now here stipulated, by and between the above-named
61 complainant, The Ontario Land Company, acting by its undersigned solicitor, and the above-named defendants, Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, acting by their undersigned solicitor herein, that the taking of testimony in the above cause shall be continued until September 15th, 1907, and that the attorneys for complainant and defendants may submit any testimony they have at such times as they shall agree on on any dates before said September 15th, 1907, and that no order of the above court be required to continue the hearing of said cause until said date; that either the complainant and defendants in said cause may submit testimony during that time as they shall see fit.

Dated this 22d day of July, 1907.

(Signed)

E. B. PREBLE,

Solicitor for said Complainant.

(Signed)

ORA P. ENGLEHART,

Solicitor for said Defendants.

[Endorsed:] Stipulation Continuing Taking of Testimony. Filed July 29th, 1907. Frank C. Nash, Clerk. By Edward E. Clever, Deputy.

62 In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Order [Extending Time of Taking Evidence to September 15, 1907].

Upon the stipulation of the above-named complainant and the above-named defendants, bearing date July 22d, 1907, signed by their

respective solicitors, E. B. Preble, for complainant, and Ira P. Englehart, for defendants, it is now here ordered that the time for taking evidence in the said cause, be, and the same hereby is, extended to September 15th, 1907.

Dated this 25th day of July, 1908.

(Signed)

C. H. HANFORD, *Judge.*

[Endorsed:] Order Extending Time for Taking Testimony. Filed July 29th, 1908. Frank C. Nash, Clerk. By Edward E. Clever, Deputy.

63 And afterward, to wit, on the 25th day of September, 1907, there was duly filed in said court and cause a Stipulation to open depositions and testimony taken before the Special Examiner without any order of Court, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

THE ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Stipulation [for Opening of Depositions and Testimony].

It is hereby stipulated by and between the above-named complainant and defendants, acting by their respective solicitors, that the depositions and testimony in the above-entitled case taken before the Special Examiner, Mrs. Lillian Van Brundt, may be opened forthwith by the Clerk of said Court, without any order of the Court.

Dated September 25, 1907.

(Signed)

E. B. PREBLE,

Solicitor for Complainant.

(Signed)

IRA P. ENGLEHART,

Solicitor for Defendants.

64 [Endorsed:] Stipulation Opening Depositions and Testimony. Filed September 25th, 1908. Frank C. Nash, Clerk. By Edward E. Clever, Deputy.

And afterward, to wit, on the 14th day of September, 1898, there was duly filed in said court and cause the testimony and exhibits in said cause, in the words and figures following, to wit:

[Testimony and Exhibits.]

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Be it remembered that before me, Mrs. Lillian Van Brundt, the examiner especially appointed by said Court, in the above-entitled cause to take the testimony therein, appeared said complainant, The Ontario Land Company, by its solicitor herein, E. B. Preble, the above-named defendants, Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, by their solicitor herein, Ira P. Englehart, at the office of said Ira P. Englehart in North Yakima, Washington, on July 22d, 1907, at ten o'clock A. M., being the time and place agreed to by said respective parties, by their said respective solicitors, for the taking the testimony herein on the part of the complainant. And thereupon, in pursuance of the order of said Court appointing me such examiner, the following proceedings were had and the following evidence taken:

[Recital Relative to Objections to Questions Asked Witnesses.]

It was, at said time and place, stipulated and agreed by the solicitors for the above-named complainant and the above-named defendants, that each and every question propounded in these proceedings by either said complainant or said defendants, be considered as formally objected to upon the grounds that the same is immaterial, irrelevant and incompetent, the same as if said objection had been made at the time of asking said question. This agreement and stipulation being made and entered into to avoid encumbering the record with numerous objections during said proceeding.

[Offers of Certain Exhibits in Evidence.]

By Mr. PREBLE: I now offer in evidence an instrument, being a certified copy of a patent by the United States of America to Charles M. Holton, certified as such by the County Auditor of Yakima County, Washington, together with the time of filing marked thereon and the certificates thereto annexed, and I ask the examiner to mark the same for identification, "Complainant's Exhibit 1," and also with her signature.

The foregoing instrument received in evidence and marked "Complainant's Exhibit 1."

66 Mr. PREBLE: I now offer in evidence an instrument, being a certified copy of a deed by Charles M. Holton and Mary E.

Holton, his wife, to Chester A. Congdon, certified by the County Auditor for the County of Yakima, State of Washington, together with the certificates thereto annexed, and ask the examiner to mark same for identification, "Complainant's Exhibit 2" and with her signature.

Said instrument was marked as requested aforesaid and received in evidence.

Mr. PREBLE: I now offer in evidence an instrument, being a copy of a deed by Chester A. Congdon and Clara B. Congdon, his wife, to The Ontario Land Company, certified as such by the County Auditor of Yakima County, State of Washington, together with the certificates thereto annexed, and I ask that the examiner mark said instrument for identification, "Complainant's Exhibit 3" and with her signature.

Said instrument received in evidence and marked as requested as aforesaid.

Mr. PREBLE: I now offer in evidence an instrument, being a copy of power of attorney from Clara B. Congdon to Chester A. Congdon, certified as such by the county auditor of Yakima county, Washington, together with the certificates thereto annexed, and ask that the examiner mark the same for identification, "Complainant's Exhibit 4" and with her signature.

Said instrument received in evidence and marked as requested aforesaid.

Mr. PREBLE: I now offer in evidence an instrument, being a copy of the plat of Capitol Addition to North Yakima, Washington, and of all writings and endorsements thereon, certified as such by the county auditor of Yakima county, Washington, together with the certificates thereto annexed, and ask that the examiner mark said instrument for identification, "Complainant's Exhibit 5" and with her signature.

Said instrument marked as requested aforesaid, and received in evidence.

Mr. PREBLE: I now offer in evidence an instrument, being a copy of the plat of Heerman's Addition to North Yakima, Washington, and of the writings and endorsements thereon, certified as such by the county auditor for Yakima county, Washington, together with the certificates attached to said instruments, and I ask the examiner to mark the said instrument for identification, "Complainant's Exhibit 6" and with her signature.

Said instrument received in evidence and marked as requested.

Mr. PREBLE: I now offer in evidence an instrument, being a copy of the judgment-roll in the proceeding in the Superior Court of the State of Washington for Yakima county, wherein Yakima county, State of Washington, is plaintiff, and Edward Whitson et al., defendants, duly certified as a copy of such judgment-roll by R. K. Nichols, county clerk of Yakima County, Washington, and Ex-officio Clerk of said Superior Court, and comprising the following instruments attached together: Copy of "Application for Judgment for Judgment Foreclosing Tax Lien," certified by R. K. Nichols as such clerk; and a copy of the "Summons for Publication in Foreclosure of the Tax Lien" in said proceeding,

certified as such copy by said clerk of said court; and a copy of the "Judgment in Foreclosure of Tax Lien and Order of Sale," certified as such copy by said clerk of said court; and a copy of the "Affidavit of Publication" in said proceeding annexed to a copy of the "Summons for Publication in Foreclosure of Tax Lien, certified as such copy by the clerk of said court, and I ask that the examiner endorse said judgment-roll on the back thereof for identification as "Complainant's Exhibit 7" and with her signature; and that she mark for identification the said copy of "Application for Judgment for *Judgment* Foreclosing Tax Lien," "Complainant's Exhibit A" with her signature; and that she mark said "Summons for Publication in Foreclosure of Tax Lien" for identification, "Complainant's Exhibit B" and with her signature; and that she mark said copy of "Judgment in Foreclosure of Tax Lien and Order of Sale" for identification, "Complainant's Exhibit C" with her signature; and that she mark for identification said "Affidavit of Publication" with "Summons for Publication in Foreclosure of Tax Lien" annexed thereto, "Complainant's Exhibit D" and with her signature; and I offer in evidence all endorsements and particularly the endorsement on each thereof of the time of the filing thereof with the clerk of the Superior Court of the State of Washington; and I offer in evidence each and every of the certificates of attestation and of magistracy attached to said judgment-roll and to each and every of said
69 respective instruments comprised in said judgment-roll.

The said copy of judgment-roll marked as requested as aforesaid, and comprising the said certified copy of "Application for Judgment for *Judgment* Foreclosing Tax Lien," and certified copy of "Summons for Publication in Foreclosure of Tax Lien and the said certified copy of "Judgment in Foreclosure of Tax Lien and Order of Sale," and said certified copy of "Affidavit of Publication" annexed to "Summons for Publication in Foreclosure of Tax Lien," each respectively marked for identification as requested aforesaid, together with the several certificates of authentication and magistracy thereto annexed, are received in evidence.

[*Testimony of R. K. Nichols.*]

R. K. NICHOLS, a witness on behalf of the said complainant, appearing before me personally, was by me duly cautioned and duly sworn, and upon being interrogated by E. B. Preble, complainant's solicitor, testified as follows:

Q. What official position do you hold under the laws of the State of Washington?

A. County clerk and ex-officio clerk of the Superior Court of the State of Washington, in and for the county of North Yakima.

Q. I now hand you papers in evidence in this cause being certified copy of the judgment-roll in the Superior Court of the State of Washington, for Yakima county, entitled "Yakima County, State of Washington, plaintiff, vs. Edward Whitson et al., defendants," and consisting of certified copy of Application
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for Judgment *for judgment* foreclosing Tax Lien, marked "Complainant's Exhibit A." And Summons for Publication in Foreclosure of Tax Lien marked "Complainant's Exhibit B" and Affidavit of Publication appended to Summons for Publication in Foreclosure of Tax Lien marked "Complainant's Exhibit D," and I ask you if you have examined the original files in your said office of which the said exhibits are respectively copies, and know when said originals were filed respectively, in your said office according to the records and files thereof?

A. I have examined the original files of which the aforesaid are true copies, and know when they were respectively filed.

Q. On what date was the said original Application for Judgment Foreclosing Tax Lien filed in the said office of the clerk of the Superior Court of the State of Washington for Yakima county?

A. September, 1902.

Q. On what date was said Summons for Publication in Foreclosure of Tax Lien filed in the office of the clerk of said Superior Court in the State of Washington, for Yakima county?

A. January 3d, 1902.

Q. On what date was said Judgment in Foreclosure of Tax Lien and Order of Sale filed in the office of the clerk of said Superior Court of the State of Washington in and for Yakima County?

71 A. September 2d, 1902.

Q. On what date was said Affidavit of Publication with the said Summons for Publication in Foreclosure of Tax Lien appended thereto filed in your said office of clerk for said Superior Court, of the State of Washington, for Yakima county?

A. July 23d, 1902.

Q. So far as appears from the records and files of your said office is there, or was there ever, filed in your said office any application for judgment or petition or complaint in the said proceedings of Yakima county, State of Washington, plaintiff, vs. Edward Whitson et al., defendants, other than the said Application for Judgment filed on September 2d, 1902?

A. No.

Q. So far as appears from the records and files of your office, is there or was there ever filed in your office aforesaid, of clerk of said Court for the State of Washington, Yakima county, any affidavit or other proof of the publication or service of any summons in the said case of Yakima county, State of Washington, vs. Edward Whitson et al., other than the said Affidavit of Publication filed on the 23d day of July, 1902?

A. No.

Q. So far as you know and so far as appears from the records and files of said office of clerk of the Superior Court of the State of Washington for Yakima county, was any summons or process or notice ever published or served in the said proceeding of Yakima county, State of Washington vs. Edward Whitson et al., excepting
72 as set forth in said Affidavit of Publication filed July 23d, 1902?

A. No.

Q. So far as appears from the records and files of your said office of clerk of Superior Court of State of Washington for Yakima county is there or was there ever, filed, a Certificate of Delinquency upon, including or describing Block 353 in Capitol Addition to North Yakima?

A. No.

Q. So far as appears from the records and files of said office is there, or was there ever, filed therein any certificate of delinquency covering or upon or describing Block 373 in Capitol Addition to North Yakima?

A. No.

Q. So far as appears from the records and files of the said office was there any appearance of any kind or nature by the Ontario Land Company, a corporation, and the complainant in the suit at bar in the said proceedings of Yakima county, State of Washington, vs. Edward Whitson et al., in said Superior Court of the State of Washington for Yakima county?

A. There was none.

(Signed)

R. K. NICHOLS.

Subscribed and sworn to before me this 22d day of July, 1907.

(Signed)

LILLIAN VAN BRUNT,
Special Examiner.

Cross-examination of Mr. Nichols waived by Mr. Englehart.

73

[*Testimony of J. W. Day.*]

J. W. DAY, a witness called on behalf of the complainant, after being duly sworn, testified as follows:

Direct examination.

(By Mr. PREBLE:)

Q. Mr. Day, what official position did you hold under the laws of the State of Washington, in the year 1899?

A. Deputy clerk of the Superior Court of Yakima county, State of Washington.

Q. During what period were you deputy clerk of the Superior Court of the State of Washington, for Yakima county?

A. From March 1st, 1899, to January 1st, 1903.

Q. Were you ever county clerk of Yakima county, Washington, and if so, during what period?

A. Yes. From January 1st, 1903, to December 1st, 1906.

Q. In virtue of being county clerk during said period what officer were you of the Superior Court of the State of Washington, for Yakima county?

A. The clerk of the Superior Court of Yakima county, Washington.

Q. Then, if I understand you, from sometime in March, 1899, to December, 1906, you were continuously either clerk or deputy

clerk of the Superior Court of the State of Washington, for Yakima county?

A. Yes.

Q. What is the fact as to you having custody during said period, in virtue of your said offices of the records, files and books of the said Superior Court?

74 A. All of the records and documents and files pertaining to the Superior Court of Yakima county, Washington, were in my custody during said time.

Q. At any time during the period comprising the aforesaid times during which you were deputy clerk and clerk of said Superior Court of the State of Washington for Yakima county, that is, from March, 1899, to December, 1906, was there ever filed or on file in the office of the clerk of the said Superior Court of the State of Washington for Yakima county, any certificate of delinquency describing or purporting to describe or cover or to be upon Block 353 of Capitol Addition to North Yakima, Washington?

A. No.

Q. During the said period that you were either clerk or deputy clerk of said Superior Court of the State of Washington for Yakima County, was there ever filed, or on file, in the office of the clerk of said court, any Certificate of Delinquency, covering or purporting to cover, Block 373 of Capitol Addition to North Yakima, Washington?

A. No.

(Signed)

J. W. DAY.

Subscribed and sworn to before me this 22d day of July, 1907.

(Signed)

MRS. LILLIAN VAN BRUNT,
Special Examiner.

Cross-examination by Mr. Day waived by Mr. Englehart.

75 [Testimony of Albert S. Congdon.]

ALBERT S. CONGDON, a witness in behalf of complainant called and duly sworn, testified as follows:

Direct examination.

(By Mr. PREBLE:)

Q. Mr. Congdon, you may state your name and place of address.

A. Albert S. Congdon; North Yakima, Washington.

Q. What relation do you sustain to the Ontario Land Company, the complainant in this suit at bar?

A. Local manager.

Q. How long have you sustained that relation to the said complainant?

A. For the past nine years.

Q. Are you acquainted with blocks numbered 3 and 4, respectively, of Heerman's Addition to North Yakima, Washington, ac-

according to the official plat thereof of record in the office of the county auditor of Yakima county, therein, and if so how long have you been acquainted with the same?

A. Yes, sir. Since the plat was filed.

Q. Into how many lots, if you know, is said block 3 subdivided?

A. Sixteen.

Q. Into how many lots, if you know, is said block 4 subdivided?

A. Sixteen.

Q. At the time of the commencement of this suit at bar on the 10th day of January, 1907, what was the fact, if you know, as to said block 3 and each and every lot therein being vacant or in the actual possession of any one. State the facts fully as to the vacancy or occupancy of said block 3 and each and every lot therein?

A. The lots were all vacant.

Q. What is the fact, if you know, as to said block 3, and all thereof, being vacant and unoccupied since a time prior to January 10th, 1907, up to the present time?

A. They were all vacant and are still.

Q. On January 10th, 1907, and at the time of the commencement of this suit at bar what was the fact, if you know, as to said lots and each thereof in said block 4 being vacant or in the actual possession of some one?

A. Lot 6 was occupied by the contract purchaser; lot 13 was also occupied by the contract purchaser; lot 7 was also occupied. All other lots in block 4 were vacant.

Q. What is the fact as to the said lots in said block 4, if you know, continuing as to occupancy or vacancy up to the present time, as you say they were on January 10th, 1907?

A. They are in the same condition now as they were then and they have been so continuously.

Q. You say that lot 6 was occupied by the contract purchaser? What do you mean by that?

A. The party held a contract for purchase from the Ontario Land Company.

77 Q. Who was that party, do you remember?

A. W. T. Stewart.

Q. You mean, if I understand you, that W. T. Stewart occupied lot 6 under a contract executed by the Ontario Land Company to convey it to him?

A. Yes, sir.

Q. You say that lot 13 in block 4 was occupied by the contract purchaser, what do you mean by that?

A. The party held a contract for purchase from the Ontario Land Company.

Q. Who was that party?

A. Lee Dearing.

Q. What is the fact as to Lee Dearing, as aforesaid, being in the occupancy of said lot 13 on January 10th, and at the time of the commencement of this suit, under his said contract?

A. He was occupying it at that time.

Q. By the Ontario Land Company in your answers, do you mean the complainant in this action at bar?

A. I do.

Q. By whom as vendor was said contract executed under which said Lee Dearing occupied said lot 13?

A. The Ontario Land Company.

Q. Who was the vendee named in said contract?

A. Lee Dearing.

Q. Mr. Congdon, what — your present occupation or business and where do you pursue it?

A. I am a farmer and dealer in lands.

Q. How long has that been your occupation and where have you pursued it?

78 A. For the past nine years in Yakima county.

Q. Have you bought or sold lands recently in the vicinity of said blocks 3 and 4, and if so to what extent have you thus dealt?

A. I have sold several hundred lots in that vicinity within the past two or three years.

Q. Do you know what was the value on January 10th, 1907, and at the time of the commencement of this suit at bar, of each and every lot in said block 3 and the aggregate value of said block 3?

A. I do.

Q. What were said values?

A. About a thousand dollars a lot or \$16,000 for the block.

Q. You say about a thousand dollars a lot; what is the fact as to each lot then being worth not less than a thousand dollars?

A. I would say that each lot was worth not less than a thousand dollars.

Q. Do you know what was the value, on January 10th, 1907, and at the time of the commencement of this action of each and every of said lots in block 4, and the value of the entire block?

A. I do.

Q. What were said values?

A. I would say that each lot was worth a thousand dollars, and the whole block worth sixteen thousand dollars.

Q. What is the fact, if you know, as to each and every of said lots in said blocks having been ever since said January 10th, of value equal to their value on said date?

79 A. They are worth as much to-day as they were then.

Q. Do you know whether or not the complainant in this action, The Ontario Land Company, in any way appeared in the tax foreclosure proceedings in the Superior Court of the State of Washington, for Yakima county, wherein Yakima county was plaintiff, and Edward Whitson et al., were defendants, and a certified copy of the judgment-roll in which proceedings, marked "Complainant's Exhibit 7," I now hand you? (Exhibit 7 handed witness.)

A. They did not. I know they did not.

Q. You will state the fact as to whether the Ontario Land Company, the complainant in this case at bar, in any way appeared in said Superior Court of the State of Washington in said tax foreclosure proceedings?

A. They did not.

Q. I now hand you an instrument introduced in evidence and marked "Complainant's Exhibit 2," and being a certified copy of a deed executed by Charles M. Holton and wife to Chester A. Congdon, and I ask you if you are acquainted with the tract of land in said instrument purported to be conveyed to the said Chester A. Congdon and with the location on the ground of the boundaries thereof given in said deed, being all of the east half of southwest quarter and west half of southeast quarter of section twenty-four in township thirteen north, range eighteen E., W. M., excepting a ten acre tract therein, described in said deed, and therein reserved to said Holton, and if so for how long a time have you been acquainted with said land and its said boundaries? (Witness handed Exhibit 2 of Complainant's.)

A. I am acquainted with it and have been generally acquainted for the past eighteen years and intimately acquainted with it for the past nine years.

Q. What is the fact as to you now being and for the last eight or nine years having been, acquainted with the boundaries on the ground of the said land conveyed by Holton to Congdon as the said boundaries are given in said Exhibit 2?

A. I am well acquainted with the boundaries on the ground of this land and have been for the past nine years.

Q. What is the fact as to your being acquainted with the said ten acre tract in the said deed reserved to Holton and wife and with the location on the ground of the boundaries thereof, given in said deed?

A. I am well acquainted with this land and also the boundaries, and have been for the past nine years.

Q. You may state how you became acquainted with the said tract of land conveyed by Holton and wife to Chester A. Congdon and with the said ten acre tract reserved to Holton and with the boundaries on the ground of the said respective tracts?

A. I own and occupy the adjacent property, and have occupied this as a home for the past nine years.

81 Q. You say adjacent property *property*; what do you mean by that?

A. I mean the property bounded on the east by the Holton ten acre tract. I became acquainted with the tract purchased by Chester A. Congdon from Charles A. Holton eighteen years ago, at the time of its purchase, and was on the property at that time.

Q. I now hand you an instrument in evidence in this cause marked "Complainant's Exhibit 3" (witness handed Exhibit 3), and being a copy of a deed by Chester A. Congdon and wife to the Ontario Land Company purporting to convey all of the east half of southwest quarter and west half of southeast quarter of said section twenty-four in township thirteen and north of range eighteen E., W. M., excepting a ten acre tract therein described, and I ask if you are acquainted with the said ten acre tract so excepted from the operation of said deed, and with the location on the ground of the boundaries thereof given in said deed?

A. I am well acquainted with the boundaries on the ground of this land and have been for the past nine years.

Q. What is the fact as to the said ten acre tract excepted from the operation of the deed from Holton and wife to Congdon and the boundaries thereof on the ground corresponding to and being identical with the ten acre tract and the boundaries thereof on the ground, excepted from the operation of the deed by Congdon and wife
82 to the Ontario Land Company, as the said tracts and boundaries are respectively given in said respective deeds?

A. It is identical. The two tracts are identical and the boundaries are identical.

Q. I now hand you an instrument marked "Complainant's Exhibit 5," being a certified copy of the plat of Capitol Addition to North Yakima, Washington (witness handed Exhibit 5), and I ask you if you are acquainted with the tract of land on said plat marked "reserved" and with the location on the ground of the boundaries of said tract, given in said plat?

A. I am well acquainted with the land and with its boundaries on the ground.

Q. How did you become acquainted with it, Mr. Congdon?

A. I had charge of the platting of this land.

Q. What is the fact as to any part of the said ten acre tract excepted from the operation of said deeds executed respectively by Holton and wife to Chester A. Congdon and by Congdon and wife to the Ontario Land Company being within the boundaries of the said tract marked "reserved" on said plat?

A. No part of the ten acres tract is within the tract marked "reserved."

Q. What is the fact, if you know, as to Chester A. Congdon having taken possession of the said land conveyed to him by the said deed executed by the said Holton and wife?

A. He took possession of it.

83 Q. When, as near as you can tell?

A. At the time he purchased it from Charles M. Holton.

Q. What is the fact as to the Ontario Land Company, aforesaid, if you know, having taken possession of the said land under the said conveyance to it by Chester A. Congdon and wife.

A. The Ontario Land Company took possession of it.

Q. When?

A. At the time it was conveyed to them.

(Signed)

ALBERT S. CONGDON.

It is agreed by the attorneys for the complainant and defendant that the cross-examination of Mr. Congdon shall be continued until 10 A. M., August 26th, 1907.

The taking of the testimony in the above-entitled cause having been continued to August 26th, 1907, by agreement of the solicitors for the above-named complainant and the above-named defendant and the solicitors for the above-named complainant and the above-named defendant being present, it was agreed that the further taking

of the testimony in said cause be continued to and until Wednesday, August the 28th, 1907, at the hour of 10 A. M.

Cross-examination:

On this August 28th, 1907, at ten o'clock A. M., the said parties appear, each by their respective solicitors as aforesaid, and the following proceedings were had:

84 A. S. CONGDON, the aforesaid witness, testified upon cross-interrogatories propounded by Mr. Englehart, as follows:

Q. What office do you hold in the Ontario Land Company?

A. Local manager.

Q. Are you not the State representative of the Ontario Land Company?

A. No, sir, I am the representative appointed by the company in this State to receive service of papers. The President of the Ontario Land Company resides in this State.

Q. Is your appointment as agent of the company in writing?

A. I think it is filed with the Secretary of State.

Q. Is your appointment as local agent in writing?

A. Yes, sir.

Q. Where is the writing appointing you local agent?

A. It is embodied in a contract of a private nature in my possession.

Mr. ENGLEHART: I will now ask for the production of the contract.

WITNESS: I decline to give the contract.

Q. What is the date of that contract?

A. I don't remember at this time.

Q. Where is the contract and appointment?

A. It is locked in my safe at my residence.

Q. Where is your residence from the place where you now are?

A. On Lot D, Capitol Addition.

85 Q. How far is that from where you now are?

A. A mile and a quarter.

Q. Is there any reason why you cannot show this appointment than that you do not want to?

A. Yes.

Q. What is the reason?

A. It is a reason of a private nature.

Q. The only record of your appointment as this agent is in this contract, is it?

A. No, sir.

Q. Where is the other?

A. On about four hundred contracts of purchase of property in this county.

Q. How does your authority to act for the Ontario Land Company show on any of these four hundred contracts?

A. By the signature of the Ontario Land Company, by myself as agent and the acceptance of the same as valid authority.

Q. Then all these 400 contracts show that you signed contracts for the sale of real estate by the Ontario Land Company as their agent, does it not?

A. Yes.

Q. I mean is there any other instrument than this contract which you refer to as your private contract, which shows your authority to act for the Ontario Land Company in this vicinity?

A. There are?

Q. Where?

A. In my safe.

Q. Then Mr. Congdon I will ask you to produce here any
86 and all instruments in writing or writings executed by the Ontario Land Company which shows your authority to act for the company in this vicinity at the present time and for the past ten years?

A. I have no objection to that.

Q. Of course you understand that this includes the instrument which you call your private contract, do you?

A. I do not understand it so.

Q. Well, I will want that contract also. Will you bring that also?

A. I have already declined to do so.

Cross-examination adjourned until September 5th, at ten A. M. for Mr. Congdon to get written instruments and writings.

[Stipulation Relative to Mr. A. S. Congdon, etc.]

It is agreed and stipulated by the solicitors for the complainant and defendants that Mr. A. S. Congdon has been the agent of the complainant, the Ontario Land Company, a corporation, at North Yakima, Yakima county, Washington, continuously for a period prior to the year 1900 and to the present time; that as such agent he was authorized and bound to look after, leasing, improving, and selling complainant's property in Yakima county, and generally to care for the interests and property of complainant in said county and devote his entire time and attention to the management and improvement and disposition of complainant's said property and to protect complainant's interests in said property. And said contract is still
87 in force, and in virtue of the said appointment, and in pursuance thereof, the said A. S. Congdon now is, and ever since has acted as such agent of said complainant in respect of said property and property interests.

On September 5th at ten A. M. at the office of Ira P. Englehart, in North Yakima, Washington, the parties appeared by their respective solicitors, as aforesaid, and the cross-examination of said A. S. Congdon was continued as follows:

Cross-examination continued:

Q. Mr. Congdon, who has attended to the matter of the Ontario Land Company's assessments and taxes for State, county and other

purposes since you have been the agent of the company at North Yakima?

A. Part of the time I have attended to them myself; the balance of the time the matter was attended to by the head office.

Q. Isn't it true that ever since that time, that is, the time during which you were the North Yakima agent of the Ontario Land Company, that you are the one who has given in the assessment and looked after the matter of finding out what lands have been assessed and for how much?

A. Not entirely so.

Q. Who looked after this matter for the company during the year 1902?

A. I do not remember for that particular year.

Q. In your direct examination you state that one W. T. Stewart occupied lot 6 under a contract executed by the Ontario Land Company. When was that contract made with Stewart?

88 A. I do not remember the exact date.

Q. Was it made since the year 1902?

A. Yes.

Q. About how many days after?

A. I can tell exactly at my office. Sometime in the winter of 1904 and 1905.

Q. How about the contract you refer to as having been made with Lee Deering?

A. I think that was made in the summer of 1905.

Q. On the map which you have introduced in evidence as showing Capitol Addition I notice streets referred to as Walla Walla Avenue and Seattle Avenue. Are those streets opened and used by the public? (Showing map to witness.)

A. They are.

Q. How long have they been so used and opened to your knowledge?

A. Ever since the plat was filed.

Q. How about the streets designated as West Sprague and West Chestnut Streets?

A. Ever since the addition was platted they have been opened.

Q. Is West Walnut street, and has it been ever since the date of the Capitol Addition plat, open and in use by the public up to the block shown on the plat and marked "reserved"?

A. West Walnut Street between blocks 392 and 393 has always been used by the public since the filing of the plat and also the easterly portion of West Walnut Street lying east of the track marked "reserved."

89 Q. Has Spokane Avenue always been open and used by the public as shown on the map, up to the point where the block is located which is marked "reserved?"

A. Spokane Avenue north of the tract marked "reserved" has been opened and used ever since the plat was recorded, and that portion of Spokane Avenue lying south of the tract marked "reserved" was fenced and used as a pasture for a number of years, up to about 1905, I think.

Q. I notice that you have a map which has been introduced in this case, called a plat of Heerman's Addition to North Yakima. Is it not true that this map of Heerman's Addition is a plat of the block of land marked "reserved" on the Capitol Addition map?

A. It is.

(Signed)

ALBERT S. CONGDON.

[*Testimony of C. H. Wilfong.*]

C. H. WILFONG, one of the defendants, being called on his own behalf, after being duly sworn, testified as follows:

Direct examination.

(By Mr. ENGLEHART:)

Q. State your name; residence.

A. C. H. Wilfong; North Yakima.

Q. Are you the C. H. Wilfong named as the defendant in this action?

A. Yes, sir.

Q. I will ask you to look at this instrument and see what it is. (Instrument handed witness.)

A. The deed I got from Mr. Dudley, the then County Treasurer of Yakima County.

90 Q. How much did you pay the county for the property described in this deed?

A. To the best of my recollection it was \$202.90. I am not certain.

Q. Is this the instrument under which you claim title to the property therein described? (Witness handed deed.)

A. Yes, sir.

(Signed)

C. H. WILFONG.

Mr. ENGLEHART: I offer this deed in evidence and ask that it be marked Defendant's Exhibit "L."

Mr. PREBLE: We object to said deed on the ground that it is immaterial, irrelevant, incompetent, and no foundation laid for its introduction.

[*Stipulation Relative to Introduction of Judgment-Roll in Evidence.*]

It is stipulated and agreed by the solicitors for the complainant and defendant that the Judgment-roll, heretofore introduced in this case by the complainant, shall be considered as introduced also by the defendants, subject, however, to complainant's objection to the same and each and every instrument therein, on the ground of irrelevancy and immateriality.

Mr. ENGLEHART: I now offer certified copy of deed of William B. Dudley, County Treasurer of Yakima County, to W. J. Reed.

Mr. PREBLE: Objected to on the ground that the same is irrelevant, immaterial and incompetent, and that no foundation has been laid for its introduction.

91 It is stipulated and agreed that said deed is a certified copy of tax deed from William B. Dudley to W. J. Reed, under which said W. J. Reed claims title to block 373, and that it was filed for record on the day certified.

Mr. ENGLEHART: I offer said deed in evidence and ask that it be marked Defendant's Exhibit "2."

Mr. PREBLE: Objected to on the ground that said deed is irrelevant, immaterial and incompetent, and that no foundation has been laid for its introduction.

[Testimony of William B. Dudley.]

WILLIAM B. DUDLEY, a witness on behalf of the defendants, testified as follows:

Direct examination.

(By Mr. ENGLEHART:)

Q. Your name is W. B. Dudley?

A. Yes.

Q. Were you ever Treasurer of Yakima County—if so, what years?

A. Yes, sir. From 1899 to 1903.

Q. Were you County Treasurer of Yakima County at the time blocks 353 and 373 of Capitol Addition was sold to Walter J. Reed and C. H. Wilfong, respectively?

A. Yes, sir.

Q. Did you have any conversation with A. S. Congdon, prior to the time these lots were sold for taxes as shown by the two deeds to Wilfong and Reed?

92 A. That was the only time that I remember having a conversation with him in regard to these two lots, was prior to that.

Q. Did you have a conversation with him prior to the sale of these lots, about the unpaid taxes on them, did you?

A. Yes, sir, I did. I have had one or more conversations with Albert, but with Chester Congdon I only remember of having a conversation once in regard to that particular property.

Q. By Albert Congdon, do you mean, A. S. Congdon?

A. I do.

Q. What was the substance of your conversation with A. S. Congdon relative to the unpaid taxes on these blocks prior to their sale to Wilfong and Reed?

Mr. PREBLE: Objected to as irrelevant, immaterial and incompetent.

A. Why, that they expected in some way to beat the taxes, I don't

know how, and that was the reason why they were not going to pay them.

Q. Was Congdon referring to the two blocks in question here, to wit: 353 and 373?

A. He was.

Q. How many blocks were sold for delinquent taxes claimed to have been owned by the Ontario Land Company at that time?

A. Four, as I remember.

Q. Were all four of these blocks located on that portion of the Capitol Addition which is shown on the map of that Addition, and marked as "reserved"?

A. They were.

93 Q. When did you have a conversation with Chester A. Congdon relative to the delinquent taxes on these blocks, designated as 353 and 373?

A. I don't remember the exact date, but it was during one of his visits here, and he was in the office looking up other matters, and I mentioned this matter of taxes to him then.

Q. Was this before this property was sold to Wilfong and Reed?

A. It was.

Q. What did Chester A. Congdon say about the Ontario Land Company paying these taxes?

Mr. PREBLE: Objected to as irrelevant, immaterial and incompetent.

A. I don't remember his answer now, but the idea conveyed was that he was not willing at present, at any rate, to pay the taxes. And he considered that they were not holden for the taxes.

Q. Were these two lots sold to Wilfong and Reed designated as blocks in Capitol Addition?

A. They were.

Q. Did you inform A. S. Congdon and Chester A. Congdon before you sold these blocks that they were assessed to the Ontario Land Company as blocks 353 and 373 in Capitol Addition?

A. That is my recollection.

Q. Did you tell both A. S. Congdon and Chester A. Congdon that as Treasurer of Yakima County, Washington, that you have to sell the two blocks in question if the delinquent taxes were not paid?

Mr. PREBLE: Object to that as irrelevant, immaterial and incompetent.

94 A. Yes, sir, in substance.

Q. Did Chester A. Congdon and A. S. Congdon during their conversation with you before the sale of these blocks to Reed and Wilfong say anything about the fact that these two blocks were assessed and that there were delinquent taxes against them?

Mr. PREBLE: We object to that as irrelevant, immaterial and incompetent and leading.

A. They did.

Q. Who did the two Congdon's say owned this property in their conversation with you?

A. I don't know that they mentioned the owner's name, but there is not doubt in my mind that they claimed they owned the same. They claimed they owned it as the Ontario Land Company.

Q. Did Chester A. Congdon, in any conversation he had with you relative to the unpaid taxes on the lands in question, state to you that he knew that the county claimed delinquent taxes against this property as blocks 353 and 373 of Capitol Addition to North Yakima?

Mr. PREBLE: We object to that as leading, irrelevant, immaterial.

A. That is as I understand it; yes.

Q. This conversation was prior to the sale of the blocks to Wilfong and Reed?

A. It was.

Q. Do you know what position Chester A. Congdon held in the Ontario Land Company at the time he held this conversation with you?

A. He was president, as I remember.

95 Cross-examination.

(By Mr. PREBLE:)

Q. In saying that Chester A. Congdon was president you are merely giving your impression as to the matter and not intending to convey the idea that you know, are you?

A. Well, that was my impression as to just tell how I obtained that impression I can't now remember.

(Signed)

WM. B. DUDLEY.

Witness excused.

[*Testimony of E. G. Peck.*]

E. G. PECK, being called in behalf of defendant, after being duly sworn, testified as follows:

Direct examination:

Q. Have you been the County Treasurer or Deputy County Treasurer of Yakima County? If so for what year?

A. I was Deputy County Treasurer, beginning the first Monday in January, 1899, ending the first Monday in January, 1903. I was County Treasurer beginning the first Monday in January, 1903, ending the first Monday in January, 1905.

Q. Do you know Albert S. Congdon, the representative of the Ontario Land Company in Yakima County, and the same gentleman who has testified in this case?

A. I do.

Q. How long have you known him?

A. I think eleven or twelve years.

96 Q. Did you ever have any conversation with Mr. Congdon prior to the 2d day of May, 1903, as to delinquent and unpaid taxes, as shown on the Treasurer's books of Yakima County, on blocks 353 and 373 of Capitol Addition to the city of North Yakima, and as to these taxes being delinquent and unpaid?

Mr. PREBLE: Objected to on the ground that the same is immaterial, irrelevant and incompetent.

A. I remember of having a conversation with Mr. Congdon on that subject, and think it was prior to that date, but am not positive as to the exact date of the conversation.

Q. Do you remember when the property known as blocks 353 and 373 was sold to C. H. Wilfong and W. J. Reed for delinquent taxes?

A. I remember that those lots were sold to the parties mentioned, as I was there at the sale, but do not remember the date. The record will show the date.

Q. Was this conversation with Mr. Congdon before the sale of these blocks to Mr. Wilfong and Mr. Reed, or not?

A. The conversation was before the sale.

Q. Where was that conversation held?

A. In the County Treasurer's office in North Yakima.

Q. Did Mr. Congdon claim to be representing the Ontario Land Company and its lands in this county at the time of this conversation?

97 Mr. PREBLE: We object to that as leading.

A. I do not remember that he ever represented to the County Treasurer's force of clerks that he represented the Ontario Land Company, but I have always supposed that he is their representative at this point.

Q. What reason did Mr. Congdon give as to why the Ontario Land Company had not or would not pay the then delinquent taxes on these two blocks of land?

Mr. PREBLE: We object to that as irrelevant, immaterial and incompetent.

A. I never heard him give any reason.

Q. Did Mr. Congdon say to you whether the Ontario Land Company was going to pay these taxes on these blocks or not?

A. He gave me to understand that the taxes on these blocks could not be collected.

Q. Did you tell Mr. Congdon, in that conversation, or give him to understand that these blocks had been taxed by the State and county, that the taxes on them were delinquent, and that the blocks would be sold under the tax laws of Washington in a short time if they were not paid by the company?

Mr. PREBLE: Objected to as irrelevant, incompetent and immaterial, and leading.

A. I gave him to understand that these blocks together with other

property throughout the county, had been advertise- for sale and would be put up at public auction for delinquent taxes.

98 Q. Were you referring in that conversation to the delinquent taxes for which this property was afterwards sold to Wilfong and Reed?

A. I was.

No cross-examination.

Witness excused.

On this September 13th, 1907, at the office of Ira P. Englehart, North Yakima, Washington, being the time and place to which the taking of testimony was adjourned, there appeared before the said examiner the above-named parties by their respective solicitors, as aforesaid, and the following proceedings were had:

[Offers of Certain Exhibits in Evidence, etc.]

Mr. PREBLE: I offer in evidence certified copy of deed by the Ontario Land Company to Alfred L. Johnson, and ask that the same — "Complainant's Exhibit 8."

I offer in evidence certified copy of deed by the Ontario Land Company to Joseph E. Thompson, and ask that the same be marked "Complainant's Exhibit 9."

I offer in evidence certified copy of deed by The Ontario Land Company to Josiah S. Burk and ask that the same be marked for identification "Complainant's Exhibit 10."

I offer in evidence certified copy of deed by The Ontario Land Company to S. J. Lowe, and ask that the same be marked for identification "Complainant's Exhibit 11."

99 I offer in evidence certified copy of deed by The Ontario Land Company to Elizabeth Osborne, and ask that the same be marked "Complainant's Exhibit 12."

Mr. ENGLEHART: The defendants object to the introduction of all of said deeds for the reason that they are incompetent, immaterial and irrelevant, and do not tend to prove any issues in this case.

[Testimony of Albert S. Congdon.]

ALBERT S. CONGDON, a witness on the part of the complainant, upon being recalled and duly sworn and interrogated by complainant's solicitor, testified as follows:

Direct examination.

(By Mr. PREBLE:)

Q. In the conversations had between you and William B. Dudley and E. G. Peck, witnesses in this cause, what if anything was said by you to them, respectively, as to the Ontario Land Company pay-

ing the alleged taxes assessed against blocks 353 and 373 of Capitol Addition?

A. I told them practically that the payment of these taxes would not operate as a payment of the taxes on the "reserved" tract, nor would it prevent the re-assessment and the compelling of The Ontario Land Company to pay another tax for the reason that we claimed the land as described did not describe our property.

Q. Was Chester A. Congdon ever president of complainant—The Ontario Land Company?

A. He never was.

100 Q. How do you know?

A. I was for several years secretary of The Ontario Land Company, and have been a stockholder in that company for many years and familiar with the officers of the company and its business generally.

Q. On January 10th, 1907, and for a time prior thereto and ever since said date and at the time of the commencement of this action, who was in possession of lot 7 in block 4 of Heerman's Addition to North Yakima?

Mr. ENGLEHART: We object on the ground that this is not proper rebuttal, and that this is immaterial and irrelevant.

A. Alfred L. Johnson.

Q. Is Alfred L. Johnson, that you refer to, the grantee in that instrument marked "Complainant's Exhibit 8," and which I now hand you?

A. He is the same Johnson.

Cross-examination.

(By Mr. ENGLEHART:)

Q. Mr. Congdon, during what years have you been a stockholder of the Ontario Land Company?

A. From the year 1901 to the present date.

Q. During what years have you been secretary of the Ontario Land Company?

A. 1894, 1895 and 1896.

Q. What office in the Ontario Land Company did Chester A. Congdon hold at the time of the alleged conversation with Mr. Dudley?

101 A. He has been vice-president and treasurer ever since the organization of the company and holds those positions to-day.

Q. Where are the by-laws of this corporation?

A. I think they are in Duluth, Minnesota.

Q. Who is the active manager and active officer of the Ontario Land Company?

A. Mr. Chester A. Congdon.

Q. For how many years has Mr. Chester A. Congdon been the active officer of the Ontario Land Company?

A. Ever since its organization.

Q. Was he the officer during all this time, who had charge of the affairs of the company as the general supervising officer?

A. I understand he was. I understand that Mr. Heerman has in some cases had charge of certain property that has been purchased by the Ontario Land Company, in some parts of the United States.
(Signed) ALBERT S. CONGDON.

Witness excused.

[Special Examiner's Certificate to Testimony, etc.]

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Plaintiff,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

102 UNITED STATES OF AMERICA,
State of Washington, County of Yakima, ss:

I, Mrs. Lillian Van Brundt, Special Examiner in the above-entitled suit, named in and appointed by the order of said Court, heretofore duly entered in the above-entitled cause, do hereby certify and return that the foregoing testimony in the said case was taken before me at the times and places in the foregoing record thereof indicated; and that before testifying, each of the several witnesses was duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth; that said testimony was, by the consent of each and every of the parties of said cause given by their respective solicitors therein taken by me in typewriting in the presence of the said witnesses and of the respective solicitors of the parties to the said cause, and that the testimony of each witness, after being so taken by me in typewriting, was read over by him and signed by him in my presence and in the presence of the respective solicitors of the parties to this cause.

And I further certify that the testimony of said witnesses, and each and every thereof, as thus put by me in typewriting is truly set forth in the foregoing pages numbered consecutively one to thirty-eight (1 to 38) inclusive; and that all of said testimony is set forth in said pages.

103 I further certify that the exhibits referred to in said pages and marked as therein stated are hereto annexed and herewith returned.

I further certify that all the evidence and proceedings set forth in the foregoing pages numbered, as aforesaid, were taken and had before me at the times and in the places therein set forth, and that I was attended by the said respective solicitors of the said respective parties and by the witnesses as set forth in said pages, and that each and every of said witnesses before testifying were by me duly cau-

tioned and sworn to testify the truth, the whole truth and nothing but the truth; and that the foregoing pages numbered as aforesaid contain a true and correct statement of all the testimony given or offered by the said parties, and that said exhibits are all the exhibits offered or admitted before me; and that on this September 14th, 1907, I delivered said testimony with my own hands unto said Court, and that I retained the same until I delivered it as aforesaid.

In witness whereof I have hereunto set my hand this 14th day of September, 1907.

(Signed)

MRS. LILLIAN VAN BRUNDT,
Special Examiner.

104 In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,
vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Oath of Examiner [Relative to Execution of Commission].

UNITED STATES OF AMERICA,

State of Washington, Yakima County, ss:

I, the undersigned, Mrs. Lillian Van Brundt, being first duly sworn, say, on oath, that I am the examiner especially appointed by the above-named court in the above-entitled cause to take the testimony therein by order of the Court duly entered in said cause; that I will faithfully, fairly and impartially execute the commission and discharge and perform the duties of my said office,—so help me God.

(Signed)

MRS. LILLIAN VAN BRUNDT.

Subscribed and sworn to before me this 22d day of July, 1907.

[NOTARIAL SEAL.]

(Signed)

IRA. P. ENGLEHART,
Notary Public for the State of Washington,
Residing at North Yakima.

105

COMPLAINANT'S EXHIBIT 1.

Homestead Certificate No. 39, Application 5.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Yakima, Washington Territory, whereby it appears that pursuant to the Act of Congress, approved 20th May, 1862, "to secure Home-

steads to actual settlers on the Pacific Domain," and the acts supplemental thereto, the claim of Charles H. Holton has been established and duly consummated in conformity to law, for the east half of the southwest quarter, and the west half of the southeast quarter of section twenty-four in township thirteen north, of range eighteen east of Willamette Meridian in Washington Territory, containing one hundred and sixty acres, according to the official plat of the survey of the said land, returned to the General Land Office by the Surveyor General:

Now know ye, that there is therefore granted by the United States unto the said Charles M. Holton the tract of land above described:

To have and to hold the said tract of land, with the appurtenances thereof, unto the said Charles M. Holton, and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights as
106 may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand in the City of Washington, the eighteenth day of January, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the One Hundred and Eleventh.

By the President: GROVER CLEVELAND,
[NOTARIAL SEAL.] By M. McKEAN, *Secretary*,
ROBT. W. ROSS,
Recorder of the General Land Office.

Recorded Vol. 1, page 79.

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the Records and Office Books kept in the office of the County Auditor for the said County of Yakima, a
107 public office of said State of Washington not appertaining to a Court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a patent filed for record in this office on the 28th day of December, A. D. 1887, and recorded in Volume "A" of Deeds, page 9, of the Records of Deeds of said Yakima County as appears from the record of said instrument now in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 21st day of June, A. D. 1907.

[Seal of Yakima County, Washington.]

(Signed)

WILBUR CROCKER,
*County Auditor for the County of Yakima,
State of Washington.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding Justice of said Court; that said Court is a Court of Record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation — in the name of said Wilbur Crocker and bearing the seal of said County Auditor and bearing date 108 June 21st, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the courts of this state.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed)

H. B. RIGG,
*Judge of the Superior Court of the State of Washington
in and for the County of Yakima, in Said State.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is and for more than two years last past continuously has been the duly elected, qualified, commissioned and acting Judge of the said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of Superior Court of State of Washington in and for Yakima County.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, State of Wash-
ington, and ex-Officio Clerk of said Superior Court.*

109 [Endorsed:] Complainant's Exhibit "I." (Signed) Lil-
lian Van Brundt, Special Examiner.

COMPLAINANT'S EXHIBIT "2."

Warranty Deed.

This indenture, made this sixteenth day of February, A. D. 1889, between Charles M. Holton and Mary E. Holton, his wife, of the city of North Yakima, Yakima County, Territory of Washington, parties of the first part, and Chester A. Congdon, of the city of St. Paul, of the State of Minnesota, party of the second part, Witnesseth: That the said parties of the first part for and in consideration of the sum of thirty-three thousand seven hundred and fifty (\$33,750) dollars, gold coin of the United States, to them in hand paid by the said party of the second —, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain real property situate in Yakima county, Territory of Washington, more particularly described as follows, to wit:

Being the west half of the southeast quarter and the east half of the southwest quarter of section twenty-four (24), excepting the following described tract of land situate in the southeast quarter of said southwest quarter, to wit: Beginning at a point on the south line of the said section twenty-four (24) where said line is now crossed by the fence enclosing said Holton's home place on the east side thereof; thence northerly on the line of said fence to

110 the northeast corner of said home place as now enclosed;

thence westerly on the line of the fence enclosing said home place on the north to the northwest corner thereof; thence southerly on the line of the fence enclosing said home place on the west to the south line of said section twenty-four (24); thence east on said section line to the place of beginning; together with a tract of land not now enclosed lying north of and adjoining said home place of length equal to the width of the tract enclosed in said home place and of sufficient width that when added thereto will make in all ten (10) acres, the same not being conveyed by these presents, all of the above-described tracts of land being in township thirteen (13) north, range eighteen (18) east, Willamette Meridian, and containing two hundred and seventy (270) acres of land, more or less. Excepting and reserving to the said grantors, from the operation of this conveyance, a perpetual right of way across said section twenty-four (24) to said Holton home place tract; also excepting and reserving a perpetual right of way for such irrigation ditch as is now used or may be required to convey water for irrigation of said Holton home place tract across said section twenty-four (24). Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including said Holton's entire interest in an irrigating ditch known as the "Thornton Ditch" which crosses the said northwest corner of

111 this conveyance with full notice of the right of way of the "Broad Gauge Ditch" across said land.

To have and to hold all and singular the above-named described premises together with the appurtenances as aforesaid to the said party of the second part, his heirs and assigns forever. And the said parties of the first part and their heirs, the said premises (excepting said right of way of said "Broad Gauge Ditch" and other rights of way herein reserved) in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part and his heirs and against all and every person whomsoever lawfully to claim the same shall and will warrant and by these presents forever defend.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above named.

[SEAL]

CHAS. M. HOLTON.

[SEAL]

MARY E. HOLTON.

Signed in the presence of:

CHAS. M. HOLTON. [SEAL.]

MARY E. HOLTON. [SEAL.]

DISTRICT OF COLUMBIA,

City and County of Washington, ss:

On this second day of March, A. D. 1889, before me, the undersigned authority, personally came Charles M. Holton and Mary E. Holton, his wife, who are personally known to me to be the same Charles M. Holton and Mary E. Holton whose names are subscribed to the within deed of conveyance as parties thereto, and
112 severally acknowledged the execution of the said deed for the uses and purposes therein mentioned, and I further certify that I did examine the said Mary E. Holton, wife of the said Charles M. Holton, separate and apart from her husband, and that I did make known to her the contents of the said deed, and she did thereupon acknowledge to me that she did execute the same voluntarily of her own free will and without any fear of or coercion from her husband.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[Seal of Commissioner of Deeds.]

R. H. EVANS,

*Commissioner for the Territory of Washington
in and for the District of Columbia.*

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,

County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington, not appertaining to a court.

I do further certify that the within and foregoing instrument

is a full, true and correct copy of a Warranty Deed filed for
 113 record in this office on the 26th day of March, A. D. 1889,
 and recorded in Volume "T" of Deeds, page 222, of the
 Records of Deeds of said Yakima County as appears from the record
 of said instrument now in this office.

In testimony whereof I have hereunto set my hand and affixed
 my official seal this 21st day of June, A. D. 1907.

[Seal of County Auditor for Yakima County, State of
 Washington.]

(Signed)

WILBUR CROCKER,
*County Auditor of the County of
 Yakima, State of Washington.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Wash-
 ington, in and for Yakima County, do hereby certify: That I am
 Judge of the Superior Court of the State of Washington in and for
 Yakima County, and the presiding Justice of said court; that said
 court is a court of record; that Wilbur Crocker is and at the time
 of making foregoing certificate was County Auditor for said Yakima
 County, in the State of Washington; that the within and foregoing
 attestation — in the name of said Wilbur Crocker and bearing
 the seal of said County Auditor and bearing date June 21st, 1907,
 is in due form and by the proper officer, and is by the laws of the
 State of Washington, admissible in evidence in the courts of said
 State.

114 Witness my hand at North Yakima, Washington, this 3d
 day of July A. D. 1907.

(Signed)

H. B. RIGG,
*Judge of the Superior Court of the State of Washing-
 ton in and for the County of Yakima, in said State.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Su-
 perior Court of the State of Washington, in and for the County of
 Yakima, do hereby certify: That the Honorable H. B. Rigg is
 and for more than two years last past continuously has been the
 duly elected, qualified, commissioned and acting Judge of said
 Superior Court of the State of Washington, in and for said Yakima
 County, and the presiding Justice thereof, and that I know his
 signature, and that the signature to the foregoing certificate is the
 genuine signature of said Judge.

Witness my hand and the seal of said Court, at North Yakima,
 Washington, this 9th day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington
 in and for the County of Yakima.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, State of Washington,
 and ex-Officio Clerk of said Superior Court.*

[Endorsed:] Complainant's Exhibit "2." (Signed) Lillian Van Brundt, Special Examiner.

115

COMPLAINANT'S EXHIBIT "3."

This indenture made this 24th day of May, in the year of our Lord one thousand eight hundred and ninety, between Chester A. Congdon and Clara B. Congdon (his wife), of St. Paul, Minn., parties of the first part, and the Ontario Land Company (a corporation duly organized and existing under the laws of Minnesota), party of the second part:

Witnesseth, that the said parties of the first part in consideration of the sum of One Dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents, grant, bargain and sell, release, and quitclaim to the said party of the second part, its successors and assigns forever, all those tracts or parcels of land lying and being in the county of Yakima and State of Washington, described as follows, to-wit:

The west half of the southeast quarter (W. $\frac{1}{2}$ SE. $\frac{1}{4}$) and east half of the southwest quarter (E. $\frac{1}{4}$ SW. $\frac{1}{4}$) of section twenty-four (24) except the following situate in the southeast quarter of said southwest quarter, to-wit: Beginning at a point on the south line of said section twenty-four where said line is now crossed by the fence now enclosing Holton's home place on the east side thereof: thence northerly on the line of said fence to northeast corner of said home place now enclosed, thence westerly on the line of the fence enclosing said home place on the north to the northwest corner thereof southerly on the line of the fence enclosing said home place on the

116 west to the south line of said section twenty-four; thence east on said section line to the place of beginning, together with a tract of land not now enclosed lying north of and adjoining said home place of length equal to the width of the tract, enclosed in said home place and of sufficient width that when added thereto will make in all ten acres, all of the above-described premises being in township thirteen (13) north of range eighteen (18) east, Willamette Meridian.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, its successors and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHESTER A. CONGDON. [SEAL.]
CLARA B. CONGDON. [SEAL.]

Signed, sealed and delivered in presence of:

F. A. GARRETT.
CHARLES S. BENNETT.

STATE OF MINNESOTA,

County of Ramsey, ss:

On this 27th day of May, A. D. 1890, before me personally appeared Chester A. Congdon and Clara B. Congdon, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed, signed and sealed the same as their free and voluntary act and deed for
 117 the uses and purposes therein mentioned.

(Signed)

CHARLES S. BENNETT.

Notary Public, Ramsey County, Minnesota.

[NOTARIAL SEAL.]

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,

County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington not appertaining to a Court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a quitclaim deed filed for record in this office on the 4th day of June, A. D. 1890, and recorded in Volume "L" of Deeds, page 516, of the Records of Deeds of said Yakima County as appears from the record of said instrument now in this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of June, 1907.

[Seal of the County Auditor for the County of Yakima,
 State of Washington.]

(Signed)

WILBUR CROCKER.

*County Auditor for the County of
 Yakima, State of Washington.*

118 STATE OF WASHINGTON,

County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding Justice thereof; that said Court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation — in the name of said Wilbur Crocker and bearing the seal of said County Auditor and bearing the date 21st day of June, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible in evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July A. D. 1907.

(Signed)

H. B. RIGGS,

*Judge of the Superior Court of the State of Washington
in and for the County of Yakima, in said State.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify: That the Honorable H. B. Riggs is and for more than two years last past continuously has been
119 the duly elected, qualified, commissioned and acting Judge of said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court, at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of Superior Court, State of Washington, in and for
County of Yakima.]

(Signed)

R. K. NICHOLS,

*County Clerk of Yakima County, State of Washington,
and ex-Officio Clerk of said Superior Court.*

[Endorsed:] Complainant's Exhibit "—."

COMPLAINANT'S EXHIBIT "4."

Power of Attorney.

Special.

Know all men by these presents, that, I, Clara B. Congdon, wife of Chester A. Congdon, of St. Paul, Minnesota, have made, constituted and appointed, and by these presents do hereby make, constitute and appoint, Chester A. Congdon of St. Paul, Minnesota, my true and lawful attorney for me and in my name, place and stead to manage, control and dispose of all real property of whatsoever name or nature now owned or hereafter acquired by me in Washington Territory, with full power and authority to execute on my behalf and in my name, and stead any and all instruments, covering, mortgaging, platting, or otherwise affecting said property or any
120 part thereof ratifying and confirming any and all of such acts of my said attorney heretofore done by him.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally

present, hereby ratifying and confirming all that my said attorney, Chester A. Congdon, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal the 19th day of March, one thousand eight hundred and eighty-nine.

CLARA B. CONGDON. [SEAL.]

Signed, sealed and delivered in the presence of:

WM. C. BENNETT.

ELLA JENNINGS.

STATE OF MINNESOTA,

County of Ramsey, ss:

This certifies that on this 19th day of March, 1889, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Clara B. Congdon, who is known to me to be the identical person described and who executed the within instrument and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

And I further certify that Clara B. Congdon, wife of the said Chester A. Congdon, on an examination made by me, separate
121 and apart from her said husband, and after I had made known to her the contents of the foregoing instrument, acknowledged to me that she executed the same voluntarily of her own free will and without fear of or coercion from her said husband.

In testimony whereof, I have hereunto set my hand and seal the day and year in this certificate first above written.

(Signed)

WM. C. BENNETT,

[NOTARIAL SEAL.]

Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA,

County of Ramsey, ss:

I, R. T. O'Conner, Clerk of the District Court for the Second Judicial District and County aforesaid, the same being a Court of Record, do hereby certify that William C. Bennett, Esq., before whom the annexed instrument was acknowledged, was at the time of taking such proof or acknowledgment a Notary Public in and for the said county of Ramsey, commissioned and sworn and duly authorized to take the same, that I am well acquainted with the handwriting of such officer and verily believe that the signature to said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of Minnesota.

122 In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at St. Paul this 19th day of March, A. D. 1889.

[Seal District Court.]

(Signed)

R. T. O'CONNER, *Clerk,*
By J. M. REDDING, *Deputy.*

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington not appertaining to a Court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a Power of Attorney filed for record in this office on the 23d day of March, A. D. 1889, and recorded in Volume "B," of Power- of Attorney, page 119, of the Records of Power- of Attorney of said Yakima County as appears from the record of said instrument now in this office.

123 In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of June, 1907.

[Seal of the County Auditor for the County of Yakima, State of Washington.]

(Signed) **WILBUR CROCKER,**
County Auditor for the County of Yakima,
State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding Justice thereof; that said Court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation in the name of said Wilbur Crocker and bearing the seal of said County Auditor and bearing date June 21st, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible in evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July A. D. 1907.

(Signed) **H. B. RIGG,**
Judge of the Superior Court of the State
of Washington in and for the County
of Yakima, in said State.

124 STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is

and for more than two years last past continuously has been the duly elected, qualified, commissioned and acting Judge of said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court, at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of Superior Court, State of Washington, in and for County of Yakima.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, State of
Washington, and ex-Officio Clerk of said
Superior Court.*

[Endorsed:] Complainant's Exhibit "4."

125 [COMPLAINANT'S EXHIBIT 7—JUDGMENT-ROLL.]

COMPLAINANT'S EXHIBIT "A."

In the Superior Court for the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

vs.

EDWARD WHITSON, A. F. SCHWITZER, MAGGIE N. MILLER, SARAH Claggett, Mrs. Amelia Hamel, Needham & Masters, Norther-Pacific Railroad Company, Mrs. E. Zenovitch, John A. Stone, Wm. D. Inveriaty, Mrs. A. L. Churchill, Wm. Shaw, Mary A. Beard, C. V. Fowler, Fred Mehler, Julia R. Scudder, Miller & Staggs, T. L. Bounds, J. G. Boyle, Mrs. F. E. Butler, F. M. Harshberger, Robert E. Lewis, Grafton & Batch, Jane Wilson, Frank Wheeler, Rob't P. Maynard, R. Van Buskirk, D. F. Bennett, J. H. Thomas, M. L. Masters, F. D. Shaver, W. C. Reves, Frank Affeck, Fred Parker, Mary J. Moore, Carrie M. Reed, Ontario Land Co., John Bartholet, Joseph Ley, Keith Dunlop, J. H. Needham, Frank H. Luce, C. A. Congdon, John A. Williams, W. L. Steinweg, Trustee; Fred Colmorgen, Mrs. Phoebe D. Adams, A. B. Weed, A. Churchhill Eatate, Mrs. F. E. Adkins, C. R. Goodwin, Alex. McAllister, S. O. Morford, Wm. Z. York, S. E. Jones, A. McCracken, Prosser Falls Irrigation Company, M. Ward Saluskin (Indian), D. W. Simmons, D. R. Fish, A. C. Campbell, Jr., James Glead, J. M. Evans, Amanda A. Barton, John W. Walters, Maggie N. Clark, W. J. Robbins, P. T. Gervais, Isaac Taylor, S. W. Vestal, W. A. Sargent, Mrs. L. French and B. H. Smith, Clifton Cleman, O. Vansucle, J. B. Reavis, P. J. Flint, I. N. Power (Receiver B. N. Snipes), Mrs. L. J. May, B. Statchard, J. L. Smith, Wm. L. Splawn, H. S. Rowe, J. W. Kleed, Walter Yonkin, Stephen Forsyth, Eric Ulvis, Joe Hooker, Yakima Invest.

Company, C. O. Swain, W. L. Bass, J. E. Steffins, S. Lightle, Ben Rosencrans, I. W. Dudley, W. C. Ely, W. L. Lamont, Mrs. S. Conway, H. N. Clark, C. J. -each, D. W. Owen, S. M. Thurber, Wm. R. Evans, C. B. Carlson, Nelson Williams, Chas. H. Simpson, Y. I. & I. Co., D. C. Stephens, F. P. Speck, David Miller, Y. I. & I. Improvement Co., Steel & Harshberger, J. E. Stiffins, A. S. Paul, Frank Forster, W. W. Kent, Helen P. Smith, and all Persons Unknown, if Any, Having or Claiming to Have an Interest in and to the Real Property Hereinafter Described, Defendants.

127 *Application for Judgment Foreclosing Tax Lien.*

To the Hon. Frank H. Rudkin, Judge of the said Superior Court:

Yakima County, plaintiff in the foregoing entitled action, by Wm. B. Dudley, its treasurer and legal representative, respectfully relates as follows:

That it is the holder of Certificate of Delinquency issued on the 31st day of January, A. D. 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with penalty, interest and costs thereon, upon real property situate in said county, assessed to the defendants herein for the years and in the amount hereinafter stated.

That no redemption of said property has been made, and there is now due plaintiff herein on said certificate of delinquency the amounts set forth below, following each description, marked "total":

286, North Yakima, lot 23, block 7, taxes for 1891, '2, '3, '4 and 1895, amounting to \$16.62, interest \$11.48, costs \$.10, total \$28.20, assessed to unknown owner.

294, North Yakima, lot 9, block 8, taxes for 1895, amounting to \$4.03, interest \$2.78, costs \$.10, total \$6.91, assessed to Edward Whitson.

312, North Yakima, lot 16, block 10, taxes for the year 1891, 1893-4-5, amounting to \$207.88, interest \$143.44, costs \$.10, total \$351.42, assessed to unknown owner.

128 317, North Yakima, lot 23, block 10, taxes for 1891-2-3-4-5, amounting to \$135.67, interest \$93.61, costs \$.10, total \$229.38, assessed to Maggie N. Miller.

318, North Yakima, lot 24, block 10, taxes for 1891-2-3-4-5, amounting to \$54.09, interest \$37.32, costs \$.10, total \$91.51, assessed to Maggie N. Miller.

334, North Yakima, lot 8, block 12, taxes for 1892-3-4-5, amounting to \$32.17, interest \$22.19, costs \$.10, total \$54.46, assessed to Sarah Claggett.

335, North Yakima, lot 9, block 12, taxes for 1892-3-4-5, amounting to \$32.17, interest \$22.19, costs \$.10, total \$54.46, assessed to Sarah Claggett.

336, North Yakima, lot 10, block 12, taxes for 1892-3-4-5, amounting to \$32.17, interest \$22.19, costs \$.10, total \$54.46, assessed to Sarah Claggett.

342, North Yakima, lot 20, block 12, taxes for 1892-3-4-5, amount-

ing to \$24.18, interest \$16.69, costs \$.10, total \$40.97, assessed to Sarah Claggett.

343, North Yakima, lot 21, block 12, taxes for 1892-3-4-5, amounting to \$24.18, interest \$16.69, costs \$.10, total \$40.97, assessed to Sarah Claggett.

344, North Yakima, lot 22, block 12, taxes for 1894 and 1895, amounting to \$16.18, interest \$5.18, costs \$.10, total \$21.45, assessed to unknown owner.

345, North Yakima, lot 23, block 12, taxes for 1894-1895, amounting to \$14.33, interest \$9.89, costs \$.10, total \$24.32, assessed to unknown owner.

346, North Yakima, lot 24, block 12, taxes for 1894-1895, amounting to \$14.33, interest \$9.89, costs \$.10, total \$24.32, assessed to unknown owner.

129 347, North Yakima, lot 25, block 12, taxes for 1894-1895, amounting to \$16.96, interest \$11.71, costs \$.10, total \$28.77, assessed to unknown owner.

348, North Yakima, lot 26, block 12, taxes for 1894-1895, amounting to \$17.35, interest \$11.97, costs \$.10, total \$29.42, assessed to unknown owner.

351, North Yakima, lot 3, block 13, taxes for 1891-2-3-4-5, amounting to \$24.85, interest \$17.15, costs \$.10, total \$42.10, assessed to unknown owner.

352, North Yakima, lot 4, block 13, taxes for 1891-2-3-4-5, amounting to \$31.05, interest \$21.44, costs \$.10, total \$52.59, assessed to unknown owner.

371, North Yakima, lot 32, block 13, taxes for 1891-2-3-4-5, amounting to \$49.89, interest \$34.42, costs \$.10 total \$84.41, assessed to unknown owner.

402, North Yakima, lot 8, block 15, taxes for 1893-4-5, amounting to \$52.92, interest \$36.51, costs \$.10, total \$89.53, assessed to Mrs. Amelia Hamel.

522, North Yakima, lot 13, block 32, taxes for 1892-3-4-5, amounting — \$29.01, interest \$20.02, costs \$.10, total \$49.13, assessed to Sarah Claggett.

523, North Yakima, lot 14, block 32, taxes for 1892-3-4-5, amounting to \$28.61, interest \$19.74, costs \$.10, total \$48.45, assessed to Sarah Claggett.

524, North Yakima, lot 20, block 32, taxes for 1893-4-5, amounting to \$20.12, interest \$13.88, costs \$.10, total \$34.10, assessed to unknown owner.

525, North Yakima, lot 21, block 32, taxes for 1893-4-, amounting to \$20.12, interest \$13.88, costs \$.10, total \$34.10, assessed to unknown owner.

130 533, North Yakima, lot 4, block 33, taxes for 1894, amounting to \$5.25 interest \$3.62, costs \$.10, total \$8.97, assessed to N. P. Railroad.

534, North Yakima, lot 5, block 33, taxes for 1894, amounting to \$5.25 interest \$3.62, costs \$.10, total \$8.97, assessed to N. P. Railroad Company.

535, North Yakima, lot 6, block 33, taxes for 1894, amounting

to \$5.25 interest \$3.62, costs \$.10, total \$8.97, assessed to N. P. Railroad Company.

536, North Yakima, lot 7, block 33, taxes for the year 1894, amounting to \$5.25, interest \$3.62, costs \$.10, total \$8.97, assessed to N. P. Railroad Company.

578, North Yakima, lot 9, block 35, taxes for 1892-3-4-5, amounting to \$52.60, interest 36.30, costs \$.10, total \$89.00, assessed to John A. Stone.

579, North Yakima, lot 10, block 35, taxes for 1892-3-4-5, amounting to \$13.74, interest \$9.48, costs \$.10, total \$23.32, assessed to John A. Stone.

604, North Yakima, fr. lot 12, block 42, taxes for 1893-4-5, amounting to \$4.04, interest \$2.79, costs \$.10, total \$6.93, assessed to W. D. Inverarity.

622, North Yakima, lot 9, block 52, taxes for 1891-2-3-4-5, amounting to \$22.93, interest \$15.28, costs \$.10, total \$38.85, assessed to unknown owner.

663, North Yakima, lot 10, block 52, taxes for 1891-2-3-4-5, amounting to \$22.13, interest \$15.28, costs \$.10, total \$37.51, assessed to unknown owner.

686, North Yakima, lot 1, block 54, taxes for 1895, amounting to \$12.08 interest \$8.33, costs \$.10, total \$20.51, assessed to Wm. Shaw.

131 687, North Yakima, lot 2, block 54, taxes for 1895, amounting to \$6.45, interest \$4.45, costs \$.10, total \$11.00, assessed to Wm. Shaw.

693, North Yakima, lot 15, block 54, taxes for 1894-1895, amounting to \$10.61, interest \$7.33, costs \$.10, total \$18.04, assessed to Mary A. Beard.

695, North Yakima, N. $\frac{1}{2}$ of lot 5, block 55, taxes for 1891-2-3-4-5, amounting to \$9.28, interest \$6.41, costs \$.10, total \$15.79, assessed to C. V. Fowler.

701, North Yakima, lot 1, block 56, taxes for 1892-3-4-5, amounting to \$33.61, interest \$23.20, costs \$.10, total \$56.91, assessed to Fred Mehler.

702, North Yakima, lot 2, block 56, taxes for 1892-3-4-5, amounting to \$15.87, interest \$10.95, costs \$.10, total \$26.92, assessed to Fred Mehler.

703, North Yakima, lot 4, block 56, taxes for 1895, amounting to \$19.33, interest \$13.34, costs \$.10, total \$32.37, assessed to unknown owner.

711, North Yakima, lot 16, block 56, taxes for 1893-4-5, amounting to \$9.09, interest \$6.27, costs \$.10, total \$15.46, assessed to unknown owner.

722, North Yakima, lot 14, block 57, taxes for 1893-4-5, amounting to \$5.64, interest \$3.90, costs \$.10, total \$9.64, assessed to unknown owner.

792, North Yakima, lot 11, block 73, taxes for 1892-3-4-5, amounting to \$14.73, interest \$10.16, costs \$.10, total \$24.99, assessed to Sarah Claggett.

793, North Yakima, lot 12, block 73, taxes for 1892-3-4-5, amount-

ing to \$14.73, interest \$10.16, cost- \$.10, total \$24.99, assessed to Sarah Claggett.

132 797, North Yakima, lot 7, block 74, taxes for 1894-5, amounting to \$6.43, interest \$4.44, cost- \$.10, total \$10.97, assessed to unknown owner.

798, North Yakima, lot 8, block 74, taxes for 1894-1895, amounting to \$6.83, interest \$8.68, costs \$.10, total \$11.61, assessed to unknown owner.

801, North Yakima, lot 16, block 74, taxes for 1892-3-4-5, amounting to \$37.87, interest 26.13, costs \$.10, total \$64.10, assessed to T. L. Bounds.

804, North Yakima, lot 9, block 76, taxes for 1893-4-5, amounting to \$5.68, interest \$3.92, costs \$.10, total \$9.70, assessed to unknown owner.

805, North Yakima, lot 10, block 76, taxes for 1903-4-5, amounting to \$5.28, interest \$3.67, costs \$.10, total \$9.05, assessed to unknown owner.

880, North Yakima, lot 5, block 94, taxes for 1894-5, amounting to \$5.58, interest \$3.85, costs \$.10, total \$9.53, assessed to Mrs. F. E. Butler.

889, North Yakima, lot 5, block 95, taxes for 1894-5, amounting to \$4.24, interest \$2.92, costs \$.10, total \$7.26, assessed to F. M. Harshberger.

912, North Yakima, fr. lot 13, block 102, taxes for 1891-1893-4-5, amounting to \$3.68, interest \$2.54, costs \$.10, total \$6.32, assessed to unknown owner.

1007, North Yakima, lot 7, block 115, taxes for 1892-1894-5, amounting to \$51.15, interest \$35.29, costs \$.10, total \$86.54, assessed to unknown owner.

1008, North Yakima, lot 8, block 115, taxes for 1892-1894-5, amounting to \$4.39, interest \$3.02, costs \$.10, total \$7.51, assessed to unknown owner.

133 1144, North Yakima, lot 6, block 137, taxes for 1891-2-3-4-5, amounting to \$6.69, interest \$4.61, costs \$.10, total \$11.40, assessed to unknown owner.

1145, North Yakima, lot 7, block 137, taxes for 1891-2-3-4-5, amounting to \$6.69, interest \$.61, costs \$.10, total \$11.40, assessed to unknown owner.

1146, North Yakima, lot 8, block 137, taxes for 1891-2-3-4-5, amounting to \$6.69, interest \$4.61, costs \$.10, total \$11.40, assessed to unknown owner.

1190, North Yakima, Nuson's add. to North Yakima, fr. lot 16, block 151, taxes for 1894-1895, amounting to \$3.84, interest \$2.65, costs \$.10, total, \$6.59, assessed to unknown owner.

1191, Home add. to North Yakima, fr. lot 8, block 154, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1192, Home add. to North Yakima, fr. lot 9, block 154, taxes for 1891-2-3-4-5, amounting to \$5.23, interest \$3.61, costs \$.10, total \$8.94, assessed to unknown owner.

1199, College add. to North Yakima, fr. lot 7, block 167, taxes

for 1894-5, amounting to \$.48, interest \$.33, costs \$.10, total \$.91, assessed to unknown owner.

1230, Huson's add. to North Yakima, fr. lot 7, block 172, taxes for 1894-5, amounting to \$1.85, interest \$1.28, costs \$.10, total \$3.23, assessed to unknown owner.

1231, Huson's add. to North Yakima, fr. lot 8, block 172, taxes for 1891-2-3-4-5, amounting to \$10.40, interest \$7.18, costs \$.10, total \$17.68, assessed to unknown owner.

1232, Huson's add. to North Yakima, fr. lot 9, block 172, taxes for 1894-5, amounting to \$1.85, interest \$1.28, costs \$.10, total \$3.23, assessed to unknown owner.

1233, Home add. to North Yakima, fr. lot 2, block 175, taxes for 1891-2-3-4-5, amounting to \$5.47, interest \$3.78, costs \$.10, total \$9.35, assessed to unknown owner.

1234, Home add. to North Yakima, lot 15, block 175, taxes for 1894-5, amounting to \$2.36, interest \$1.63, costs \$.10, total \$4.09, assessed to Frank Wheeler.

1235, Home add. to North Yakima, lot 16, block 175, taxes for 1894-5, amounting to \$15.40, interest \$10.64, costs \$.10, total \$26.14, assessed to Frank Wheeler.

1249, Easter Add. to North Yakima, fr. lot 3, block 189, taxes for 1894, amounting to \$.31, interest \$.22, costs \$.10, total \$.63, assessed to Robert P. Maynard.

1257, Eastern Add. to North Yakima, fr. lot 13, block 189, taxes for 1894, amounting to \$.31, interest \$.22, costs \$.10, total \$.63, assessed to unknown owner.

1261, Huson's Addition to North Yakima, fr. lot 4, block 190, taxes for 1894-5, amounting to \$.48, interest \$.33, costs \$.10, total \$.91, assessed to unknown owner.

135 1262, Huson's Add. to North Yakima, fr. lot 3, block 190, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1267, Home Add. to North Yakima, fr. lot 4, block 195, taxes for 1894-5, amounting to \$.30, interest \$.21, costs \$.10, total \$.61, assessed to R. Van Buskirk.

1268, Home Add. to North Yakima, lot 5, block 195, taxes for 1893-4-5, amounting to \$2.62, interest \$1.81, costs \$.10, total \$4.53, assessed to R. Van Buskirk.

1269, Home Add. to North Yakima, lot 6, block 195, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to R. Van Buskirk.

1270, Home Add. to North Yakima, lot 7, block 195, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to R. Van Buskirk.

1271, Home Add. to North Yakima, lot 8, block 195, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to R. Van Buskirk.

1272, Home Add. to North Yakima, lot 11, block 195, taxes for 1893-4-5, amounting to \$18.06, interest \$12.47, costs \$.10, total \$30.63, assessed to R. Van Buskirk.

1273, Home Add. to North Yakima, fr. lot 13, block 195, taxes

for 1893-4-5, amounting to \$2.59, interest \$1.78, costs \$.10, total \$4.47, assessed to R. Van Buskirk.

1274, Home Add. to North Yakima, fr. lot 14, block 195, 136 taxes for 1894-5, amounting to \$.30, interest \$.21, costs \$.10, total \$.61, assessed to R. Van Buskirk.

1283, Home Add. to North Yakima, lot 3, block 197, taxes for 1895, amounting to \$.80, interest \$.55, costs \$.10, total \$1.45, assessed to unknown owner.

1301, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 1, block 209, taxes for 1894-5, amounting to \$.46, interest \$.32, costs \$.10, total \$.88, assessed to unknown owner.

1302, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 2, block 209, taxes for 1893-4-5, amounting to \$1.85, interest \$1.28, costs \$.10, total \$3.23, assessed to unknown owner.

1303, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 3, block 209, taxes for 1893-4-5, amounting to \$2.00, interest \$1.38, costs \$.10, total \$3.48, assessed to unknown owner.

1304, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 4, block 209, taxes for 1893-4-5, amounting to \$2.25, interest \$1.55, costs \$.10, total \$3.90, assessed to unknown owner.

1305, Goodwin's Annex to Eastern Add. to North Yakima, lot 5, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1306, Goodwin's Annex to Eastern Add. to North Yakima, lot 6, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1307, Goodwin's Annex to Eastern Add. to North Yakima, 137 lot 7, block 208, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1308, Goodwin's Annex to Eastern Add. to North Yakima, lot 8, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1309, Goodwin's Annex to Eastern Add. to North Yakima, lot 9, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1310, Goodwin's Annex to Eastern Add. to North Yakima, lot 10, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1311, Goodwin's Annex to Eastern Add. to North Yakima, lot 11, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1312, Goodwin's Annex to Eastern Add. to North Yakima, lot 12, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1313, Goodwin's Annex to Eastern Add. to North Yakima, lot 13, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1314, Goodwin's Annex to Eastern Add. to North Yakima, lot 14, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

138 1315, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 15, block 209, taxes for 1894-5, amounting to \$.91, interest \$.63, costs \$.10, total \$1.64, assessed to unknown owner.

1337, Home Add. to North Yakima, fr. lot 7, block 215, taxes for 1891-3-4-5, amounting to \$3.08, interest \$2.13, costs \$.10, total \$5.31, assessed to unknown owner.

1338, Home Add. to North Yakima, fr. lot 8, block 215, taxes for 1891-2-3-4-5, amounting to \$5.31, interest \$3.67, costs \$.10, total \$9.08, assessed to unknown owner.

1339, Home Add. to North Yakima, lot 9, block 215, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to unknown owner.

1340, Home Add. to North Yakima, lot 10, block 215, taxes for 1893-4-5, amounting to \$2.62, interest \$1.81, costs \$.10, total \$4.53, assessed to unknown owner.

1341, Home Add. to North Yakima, fr. lot 11, block 215, taxes for 1891-1894-5, amounting to \$2.89, interest \$1.99, costs \$.10, total \$4.98, assessed to unknown owner.

1342, Home Add. to North Yakima, fr. lot 14, block 217, taxes for 1894-5, amounting to \$1.66, interest \$1.15, costs \$.10, total \$2.91, assessed to J. H. Thomas.

1343, Home Add. to North Yakima, fr. lot 15, block 217, taxes for 1894-5, amounting to \$1.20, interest \$.83, costs \$.10, total \$2.13, assessed to J. H. Thomas.

139 1344, Home Add. to North Yakima, fr. lot 16, block 217, taxes for 1893-4-5, amounting to \$1.45, interest \$1.00, costs \$.10, total \$2.55, assessed to J. H. Thomas.

1381, North Yakima, lot 11, block 233, taxes for 1893-4-5, amounting to \$6.57, interest \$4.54, costs \$.10, total \$11.21, assessed to F. D. Shaver.

1382, North Yakima, lot 12, block 233, taxes for 1893-4-5, amounting to \$6.57, interest \$4.54, costs \$.10, total \$11.21, assessed to F. D. Shaver.

1387, Syndicate Subdivision, fr. lot 7, block 247, taxes for 1894-5, amounting to \$.40, interest \$.28, costs \$.10, total \$.78, assessed to unknown owner.

1397, North Yakima, fr. lot 11, block 249, taxes for 1891-2-3-4-5, amounting to \$7.74, interest \$5.34, costs \$.10, total \$13.18, assessed to unknown owner.

1398, North Yakima, fr. lot 12, block 249, taxes for 1891-2-3-4-5, amounting to \$8.83, interest \$6.10, costs \$.10, total \$11.79, assessed to unknown owner.

1399, Ker's Second Add. to North Yakima, fr. lot 11, block 249, taxes for 1893-4-5, amounting to \$3.35, interest \$2.31, costs \$.10, total \$5.76, assessed to unknown owner.

1400, Ker's Second Add. to North Yakima, fr. lot 12, block 249, taxes for 1893-4-5, amounting to \$2.24, interest \$1.54, costs \$.10, total \$3.88, assessed to unknown owner.

1413, North Yakima, lot 15, block 252, taxes for 1891-2-3-4-5, amounting to \$9.22, interest \$6.36, costs \$.10, total \$15.68, assessed to unknown owner.

140 1414, North Yakima, lot 16, block 252, taxes for 1891-2-3-4-5, amounting to \$9.22, interest \$6.36, costs \$.10, total \$15.68, assessed to unknown owner.

1415, North Yakima, lot 2, block 253, taxes for 1893-4, amounting to \$5.74, interest \$3.96, costs \$.10, total \$9.80, assessed to Fred Parker.

1416, North Yakima, lot 6, block 253, taxes for 1893-4, amounting to \$35.41, interest \$24.45, costs \$.10, total \$59.96, assessed to Fred Parker.

1417, North Yakima, lot 9, block 254, taxes for 1891-2-3-4-5, amounting to \$6.92, interest \$4.77, costs \$.10, total \$11.79, assessed to unknown owner.

1418, North Yakima, lot 10, block 254, taxes for 1891-2-3-4-5, amounting to \$6.92, interest \$4.77, costs \$.10, total \$11.79, assessed to unknown owner.

1419, North Yakima, lot 13, block 254, taxes for 1893-4-5, amounting to \$3.93, interest \$2.71, costs \$.10, total \$6.74, assessed to Mary J. Moore.

1420, Syndicate Subdivision, fr. lot 16, block 266, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1503, Ker's Add. to North Yakima, lot 9, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1504, Ker's Add. to North Yakima, lot 10, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1505, Ker's Add. to North Yakima, lot 11, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1506, Ker's Add. to North Yakima, lot 12, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1507, Ker's Add. to North Yakima, lot 13, block 217, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1581, Ker's Add. to North Yakima, fr. lot 8, block 292, taxes for 1894-5, amounting to \$.48, interest \$.34, costs \$.10, total \$.92, assessed to unknown owner.

1590, Ker's Add. to North Yakima, lot 9, block 293, taxes for 1894, amounting to \$.52, interest \$.36, costs \$.10, total \$.98, assessed to unknown owner.

1607, Syndicate Subdivision, fr. lot 1 block 306, taxes for 1891-2-3-4-5, amounting to \$4.63, interest \$3.20, costs \$.10, total \$7.93, assessed to unknown owner.

1608, Syndicate Subdivision, fr. lot 2, block 306, taxes for 1891-2-3-4-5, amounting to \$3.10, interest \$2.14, costs \$.10, total \$5.34, assessed to unknown owner.

1617, Ker's Second Add. to North Yakima, fr. lot 16, block 307, taxes for 1894, amounting to \$.52, interest \$.36, costs \$.10, total \$.98, assessed to unknown owner.

1664, Capital Add. to North Yakima, lot 9, block 312, taxes for 1892-3-4-5, amounting to \$10.33, interest \$7.13, costs \$.10, total \$17.56, assessed to Carrie M. Reed.

142-179 1665, Capital Add. to North Yakima, lot 10, block 312, taxes for 1892-3-4-5, amounting to \$10.33, interest \$7.13, costs \$.10, total \$17.56, assessed to Carrie M. Reed.

1666, Capital Add. to North Yakima, lot 11, block 312, taxes for 1892-3-4-5, amounting to \$22.64, interest \$15.62, costs \$.10, total \$38.36 assessed to Carrie M. Reed.

1716, Capital Add. to North Yakima, fr. lot 1 block 316, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1717, Capital Add. to North Yakima, fr. lot 2, block 316, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1851, Capital Add. to North Yakima, all of block 352, taxes for 1892-3, amounting to \$45.35, interest \$31.29, costs \$.10, total \$76.74, assessed to unknown owner.

1852, Capital Add. to North Yakima, all of block 353, taxes for 1892-3, amounting to \$45.37, interest \$31.30, costs \$.10, total \$76.77, assessed to unknown owner.

1912, Capital Add. to North Yakima, all of block 372, taxes for 1892-3, amounting to \$45.37, interest \$31.30, costs \$.10, total \$76.77, assessed to unknown owner.

1913, Capital Add. to North Yakima, all of block 373, taxes for 1892-3, amounting to \$45.37, interest \$31.30, costs \$.10, total \$76.77, assessed to unknown owner.

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180 5811, lot 4, Sec. 18-14-27, taxes for 1894-5, amounting to \$1.09, interest \$.75, costs \$.10, total \$1.94, assessed to W. Kent.

4626, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 36-10-22, taxes for 1893-4-5, amounting to \$53.13, interest \$36.66, costs \$.10, total \$89.89, assessed to unknown owner.

4628, SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Sec. 36-10-22, taxes for 1893-5, amounting to \$37.50, interest \$25.88, costs \$.10, total \$63.48, assessed to unknown owner.

3995, NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 8-11-20, taxes for 1892-5, amounting to \$42.09, interest \$29.04, costs \$.10, total \$71.23, assessed to unknown owner.

5831, N. $\frac{1}{2}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Sec. 10-8-30, taxes for 1894-5, amounting to \$2.06, interest \$1.45, costs \$.10, total \$3.51, assessed to W. R. Evans.

5833, N. 15 acres of W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Sec. 10-8-30, taxes for 1894-5, amounting to \$7.03, interest \$4.85, costs \$.10, total \$11.88, assessed to W. R. Evans.

All of said lands, described as being in some city, or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington; and all of the above described lands

being situated in Township and range north and east of the Willamette Meridian.

Wherefore, plaintiff asks that its lien against said property be foreclosed and that judgment be given plaintiff against each
 181 piece, parcel or tract of land hereinbefore mentioned, for the amount set opposite thereto, together with costs and disbursements.

(Signed)

WM. B. DUDLEY,
County Treasurer.

STATE OF WASHINGTON,
County of Yakima, ss:

Wm. B. Dudley, being first duly sworn, on oath says: That he is the Treasurer of Yakima County, Washington, and the legal representative of the plaintiff in the above-entitled action; that he has read the foregoing, knows the contents thereof and believes the same to be true.

(Signed)

WM. B. DUDLEY.

Subscribed and sworn to before me the 2d day of August, 1902.

[Seal of Superior Court, Yakima County.]

(Signed)

J. W. DAY,
*Deputy Clerk and ex-Officio
 Clerk of the Superior Court.*

[Endorsements:] Certified Copy. File No. 64. Application for Judgment. Filed Sept. 2d, 1902. G. L. Allen, County Clerk. By J. W. Day, Deputy.

Due and legal service of the within is hereby admitted this — day of —, 190—.

JONES & GUTHRIE.

Attorneys for —, North Yakima, Washington.

182 STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk of Yakima County, and ex-officio Clerk of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That the foregoing is a true, full and correct copy of the application for judgment foreclosing tax lien in the foregoing entitled action and of the endorsement thereon of the time of the filing thereof and of all endorsements thereon as the same now appears on file in the office of the Clerk of said Superior Court.

In witness whereof I have hereunto set my hand and affixed the seal of our said Superior Court this 3d day of July, A. D. 1907.

[Seal of Superior Court, State of Washington, in and for the County of Yakima.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, Washington,
 and ex-Officio Clerk of said Superior Court.*

STATE OF WASHINGTON,
County of Yakima, ss:

I. H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington, in and for Yakima County, and the Presiding Justice of said Court; that said Court is a court of record, and that R. K. Nichols is and ever since January 14th, 1907, has been County Clerk of Yakima
183 County, in the State of Washington, and Ex-officio Clerk of said Superior Court; that the foregoing attestation in the name of said R. K. Nichols and bearing the seal of said Superior Court and bearing date 3d day of July, 1907, is in due form and by the proper officer and is by the laws of the State of Washington admissible in evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed)

H. B. RIGG,
Judge of the Superior Court of the State of
Washington in and for Yakima County.

STATE OF WASHINGTON,
County of Yakima, ss:

I. R. K. Nichols, County Clerk of Yakima County, in the State of Washington, and Ex-officio Clerk of the Superior Court of the State of Washington, in and for said Yakima County, do hereby certify: That the Honorable H. B. Rigg is and was at the time of the making of the foregoing certificate the duly elected, qualified and acting Judge of said Court, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Superior Court, at North Yakima, Washington, this 3d day of July, A. D. 1907.

[Seal of Superior Court, State of Washington, in and for
the County of Yakima.]

(Signed)

R. K. NICHOLS,
County Clerk of Yakima County, Washington,
and ex-Officio Clerk of said Court.

184 [Endorsed:] Complainant's Exhibit "A." (Signed)
Mrs. Lillian Van Brundt, Special Examiner.

COMPLAINANT'S EXHIBIT "B."

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

VS.

EDWARD WHITSON, A. F. SWITZER, MAGGIE N. MILLER, SARAH Claggett, Mrs. Amelia Hamel, Needham & Masters, Northern Pacific Railroad Company, Mrs. E. Zenovitch, John A. Stone, Wm. D. Inveriaty, Mrs. A. L. Churchill, Wm. Shaw, Mary A. Beard, C. V. Fowler, Fred Mehler, Julia R. Scudder, Miller & Staggs, T. L. Bounds, J. G. Boyle, Mrs. F. E. Butler, F. M. Harshberger, Robert E. Lewis, Grafton & Batch, Jane Wilson, Frank Wheeler, R. Van Buskirk, D. F. Bennett, J. H. Thomas, M. L. Masters, F. D. Shaver, W. C. Reves, Frank Affeck, Fred Parker, Mary J. Moore, Carrie M. Reed (Ontario Land Company), John Barthole, Joseph Ley, Keith Dunlop, J. H. Needham, Frank H. Luce, C. A. Congdon, John A. Williams, W. L. Steinweg, Trustee; J. H. Thomas, Trustee; Fred Colmorgen, Mrs. Phoebe D. Adams,
 185 A. B. Weed, A. Churchill Estate; Mrs. F. E. Adkins, C. R. Goodwin, Alex. McAllister, S. O. Morford, Wm. Z. York, S. E. Jones, A. McCracken, Prosser Falls Irrigation Company, M. Ward, Saluskin (Indian), D. W. Simmons, D. R. Fish, A. C. Campbell, Jr., James Gleed, J. M. Evans, Amanda A. Barton, John W. Walters, Maggie N. Clark, W. J. Robbins, P. T. Gervais, Isaac Taylor, S. W. Vestal, W. A. Sargent, Mrs. L. French, and B. H. Smith, Clifton Cleman, O. Vansycle, J. B. Reavis, P. J. Flint, I. N. Power (Receiver B. E. Snipes), Mrs. L. J. May, B. Seatchard, J. L. Smith, Wm. L. Splawn, H. S. Rowe, J. W. Kleed, Walter Yonkin, Stephen Forsyth, Eric Ulvis, Joe Hooker, C. O. Swain, W. L. Bass, J. E. Steffins, S. Lightle, Ben Roscercrans, I. W. Dudley, W. C. Ely, W. L. Lamont, Mrs. S. Conway, H. N. Clark, C. J. Beach, D. W. Owen, S. M. Thurber, Wm. R. Evans, C. B. Carston, Nelson Williams, Chas. H. Simpson, Y. I. & I. Co., D. C. Stephens, F. P. Speck, David Miller, Y. I. & I. Improvement Company, Steel & Harshberger, J. E. Steffins, Frank Forster, W. W. Kent, Helen P. Smith, and all Persons Unknown having, or Claiming to have an Interest in and to the Real Property Hereinafter Described, Defendants.

186 *Summons for Publication in Foreclosure of Tax Lien.*

The State of Washington to Edward Whitson, A. F. Switzer, Maggie N. Miller, Sarah Claggett, Mrs. Amelia Hamel, Needham & Masters, Northern Pacific Railroad Company, Mrs. E. Zenovitch, John A. Stone, Wm. D. Inveriaty, Mrs. A. L. Churchill, Wm. Shaw, Mary A. Beard, C. V. Fowler, Fred Mehler, Julia R. Scudder, Miller & Staggs, T. L. Bounds, J. G. Boyle, Mrs. F. E. Butler, F. M. Harshberger, Robert E. Lewis, Grafton & Batch, Jane Wil-

son, Frank Wheeler, R. Van Buskirk, D. F. Bennett, J. H. Thomas, M. L. Masters, F. D. Shayer, W. C. Reves, Frank Affeck, Fred Parker, Mary J. Moore, Carrie M. Reed, Ontario Land Company, John Bartholet, Joseph Ley, A. Congdon, John A. Williams, W. L. Steinweg, Trustee; J. H. Thomas, Trustee; Fred Colmorgen, Mrs. Phoebe D. Adams, A. B. Weed, A. Churchill Estate, Mrs. F. E. Adkins, C. R. Goodwin, Alec. McAllister, S. O. Morford, Wm. Z. York, S. E. Jones, A. McCracken, Prosser Falls Irrigation Company, M. Ward, Saluskin (Indian), D. W. Simmons, D. R. Fish, A. C. Campbell, Jr., James Gleed, J. M. Evans, Amanda A. Barton, John W. Gervais, Isaac Taylor, S. W. Vestal, W. A. Sargent, Mrs. L. French, and B. H. Smith, Clifton Cleman, O. Vansycle, J. B. Reavis, P. J. Flint, I. N. Power (Receiver B. E. Snipes), Mrs. L. J. May, B. Scatchard, J. L. Smith, Wm. L. Splawn, H. S. Rowe, J. W. Kleed, Walter Yonkin, Stephen Forsyth, Eric Ulvis, Joe Hooker, C. O. Swain, W. L. Bass, J. E. Steffins, S. Lightle, Ben Roscererans, I. W. Dudley, W. C. Ely, W. L. Lamont, Mrs. S. Conway, Wm. R. Evans, C. B. Carston, Nelson Williams, Charles H. Simpson, Y. I. & I. Co., D. C. Stephens, F. P. Speck, David Millar, Y. I. & I. Improvement Company, Steel & Harshberger, J. E. Steffins, Frank Forster, W. W. Kent, Helen P. Smith, and all Persons Unknown Having, or Claiming to Have, an Interest in and to the Real Property Hereinafter Described:

You, and each of you, are hereby notified that the County of Yakima, State of Washington, the plaintiff herein, is the holder of Certificate of Delinquency issued of the 31st day of January, 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with penalty, interest and costs thereon upon real property situate in said County, assessed to the defendants herein for the years and in the amount hereinafter stated.

No. C/D.	Description.	Sec. or lot.	Tp. or block.	Year.	Assessed to.	Amt.
286—	North Yakima	23	7—	1891-2-3-4-5.	Unknown Owner...	\$16.62
288—	North Yakima	29	7—	1891-2-3-4-5.	Unknown Owner...	19.10
289—	North Yakima	30	7—	1891-2-3-4-5.	Unknown Owner...	19.10
290—	North Yakima	31	7—	1891-2-3-4-5.	Unknown Owner...	19.10
291—	North Yakima	32	7—	1891-2-3-4-5.	Unknown Owner...	43.97
294—	North Yakima	9	8—	1895.	Edward Whitson...	4.03
312—	North Yakima	16	10—	1891-3-4-5.	Unknown Owner...	207.88
317—	North Yakima	23	10—	1891-2-3-4-5.	Maggie N. Miller...	135.67
318—	North Yakima	24	10—	1891-2-3-4-5.	Maggie N. Miller...	54.09
334—	North Yakima	8	12—	1892-3-4-5.	Sarah Claggett....	32.17
335—	North Yakima	9	12—	1892-3-4-5.	Sarah Claggett....	32.17
336—	North Yakima	10	12—	1892-3-4-5.	Sarah Claggett....	32.17
342—	North Yakima	20	12—	1892-3-4-5.	Sarah Claggett....	24.18
343—	North Yakima	21	12—	1892-3-4-5.	Sarah Claggett....	24.18
344—	North Yakima	22	12—	1894-5.	Unknown Owner...	16.18
345—	North Yakima	23	12—	1894-5.	Unknown Owner...	14.33
346—	North Yakima	24	12—	1894-5.	Unknown Owner...	14.33
347—	North Yakima	25	12—	1894-5.	Unknown Owner...	16.96
348—	North Yakima	26	12—	1894-5.	Unknown Owner...	17.35
351—	North Yakima	3	13—	1891-2-3-4-5.	Unknown Owner...	24.85
352—	North Yakima	4	13—	1891-2-3-4-5.	Unknown Owner...	31.05
371—	North Yakima	32	13—	1891-2-3-4-5.	Unknown Owner...	49.89
402—	North Yakima	8	15—	1893-4-5.	Mrs. Amelia Hamel.	52.92
508—	North Yakima, N. ½.	23	30—	1894.	Needham & Masters	3.94
522—	North Yakima	13	32—	1892-3-4.	Sarah Claggett....	29.01
523—	North Yakima	14	32—	1892-3-4-5.	Sarah Claggett....	28.61
524—	North Yakima	20	32—	1893-4-5.	Unknown Owner...	20.12
525—	North Yakima	21	32—	1893-4-5.	Unknown Owner...	20.12
533—	North Yakima	4	33—	1894.	N. P. R. R.	5.25
534—	North Yakima	5	33—	1894.	N. P. R. R.	5.25
535—	North Yakima	6	33—	1894.	N. P. R. R.	5.25
536—	North Yakima	7	33—	1894.	N. P. R. R.	5.25
556—	North Yakima	1	34—	1891-2-3-4-5.	Mrs. E. Zenovitch.	111.55
557—	North Yakima	2	34—	1891-2-3-4-5.	Mrs. E. Zenovitch.	29.13
578—	North Yakima	9	35—	1892-3-4-5.	John A. Stone....	52.60
579—	North Yakima	10	35—	1892-3-4-5.	John A. Stone....	13.74
599—	North Yakima	7	42—	1894-5.	Unknown Owner...	12.17
604—	North Yakima, fr.	12	42—	1893-4-5.	Wm. D. Inverlaty.	4.04
624—	North Yakima	12	48—	1894-5.	Mrs. A. L. Churchill	16.71
662—	North Yakima	9	52—	1891-2-3-4-5.	Unknown Owner...	22.93
663—	North Yakima	10	52—	1891-2-3-4-5.	Unknown Owner...	22.13
686—	North Yakima	1	54—	1895.	Wm. Shaw	12.08

687—	North Yakima	2	54—	1895.	Wm. Shaw	6.45
693—	North Yakima	15	54—	1894-5.	Mary A. Beard....	10.61
695—	North Yakima, N. ½.	5	55—	1891-2-3-4-5.	C. B. Fowler.....	9.28
697—	North Yakima	6	55—	1894-5.	Unknown Owner...	6.41
701—	North Yakima	1	56—	1892-3-4-5.	Fred Mehler.....	33.61
702—	North Yakima	2	56—	1892-3-4-5.	Fred Mehler.....	15.87
703—	North Yakima	4	56—	1895.	Unknown Owner...	19.33
708—	North Yakima	12	56—	1895.	Miller & Stagg....	2.48
709—	North Yakima, S. ½.	13	56—	1895.	Miller & Stagg....	1.21
710—	North Yakima	15	56—	1893-4-5.	Unknown Owner...	7.89
711—	North Yakima	16	56—	1893-4-5.	Unknown Owner...	9.09
720—	North Yakima	12	57—	1891.	Julia B. Seudder...	3.14
722—	North Yakima	14	57—	1893-4-5.	Unknown Owner...	5.64
723—	North Yakima	15	57—	1891.	Unknown Owner...	3.14
792—	North Yakima	11	73—	1892-3-4-5.	Sarah Claggett....	14.73
793—	North Yakima	12	73—	1892-3-4-5.	Sarah Claggett....	14.73
797—	North Yakima	7	74—	1894-5.	Unknown Owner...	6.43

No. C/D.	Description.	Sec. or lot.	Tp. or block.	Year.	Assessed to.	Amt.
798—	North Yakima	8	74—	1894-5.	Unknown Owner...	6.83
801—	North Yakima	16	74—	1892-3-4-5.	T. L. Rounds.....	37.87
804—	North Yakima	9	76—	1893-4-5.	Unknown Owner...	5.68
805—	North Yakima	10	76—	1893-4-5.	Unknown Owner...	5.28
843—	North Yakima	11	85—	1892-3-4-5.	Unknown Owner...	10.24
876—	North Yakima	1	94—	1895.	Unknown Owner...	2.41
877—	North Yakima	2	94—	1895.	Unknown Owner...	2.82
878—	North Yakima	3	94—	1895.	Unknown Owner...	2.41
880—	North Yakima	5	94—	1894-5.	Mrs. F. E. Butler...	5.58
889—	North Yakima	5	95—	1894-5.	F. M. Harshberger...	4.24
901—	North Yakima	12	96—	1895.	Robert E. Lewis....	.80
912—	North Yakima, fr.	13	102—	1891-3-4-5.	Unknown Owner...	3.68
941—	North Yakima	16	105—	1891.	Unknown Owner...	2.73
950—	North Yakima	13	107—	1891-2-3-4-5.	Unknown Owner...	13.03
955—	North Yakima	5	108—	1891-2-3.	Grafton and Batch...	7.44
1007—	North Yakima	7	115—	1892-4-5.	Unknown Owner...	51.15
1008—	North Yakima	8	115—	1892-4-5.	Unknown Owner...	4.39
1052—	North Yakima	16	125—	1894-5.	Jane Wilson.....	14.25
1144—	North Yakima	6	137—	1891-2-3-4-5.	Unknown Owner...	6.69
1145—	North Yakima	7	137—	1891-2-3-4-5.	Unknown Owner...	6.69
1146—	North Yakima	8	137—	1891-2-3-4-5.	Unknown Owner...	6.69
1182—	Huson's Add., N. Y.	13	149—	1892-3-4-5.	Unknown Owner...	8.16
1183—	Huson's Add., N. Y.	14	149—	1892-3-4-5.	Unknown Owner...	8.16
1190—	Huson's Add., N. Y., fr.	16	151—	1894-5.	Unknown Owner...	3.84
1191—	Home Add., N. Y., fr.	8	154—	1894.	Unknown Owner...	.27
1192—	Home Add., N. Y., fr.	9	154—	1891-3-4-5.	Unknown Owner...	5.23
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1196—	College Add., N. Y.	13	166—	1893-4-5.	Unknown Owner...	3.74
1197—	College Add., N. Y.	14	166—	1893-4-5.	Unknown Owner...	13.62
1199—	College Add., N. Y., fr.	7	167—	1894-5.	Unknown Owner...	.48
1200—	College Add., N. Y., fr.	9	167—	1894.	Unknown Owner...	.27
1230—	Huson's Add., N. Y., fr.	7	172—	1894-5.	Unknown Owner...	1.85
1231—	Huson's Add., N. Y., fr.	8	172—	1894-5.	Unknown Owner...	10.40
1232—	Huson's Add., N. Y., fr.	9	172—	1894-5.	Unknown Owner...	1.85
1233—	Home Add., N. Y., fr.	2	175—	1891-2-3-4-5.	Unknown Owner...	5.47
1234—	Home Add., N. Y.	15	175—	1894-5.	Frank Wheeler.....	2.36
1235—	Home Add., N. Y.	16	175—	1894-5.	Frank Wheeler.....	15.40
1249—	Eastern Add., N. Y., fr.	3	189—	1894-5.	Robt. P. Maynard...	.31
1251—	Eastern Add., N. Y.	9	189—	1891-2-3-4-5.	Unknown Owner...	6.91
1252—	Eastern Add., N. Y.	10	189—	1891-2-3-4-5.	Unknown Owner...	6.91
1257—	Eastern Add., N. Y., fr.	13	189—	1894.	Unknown Owner...	.31
1261—	Eastern Add., N. Y., fr.	4	190—	1894-5.	Unknown Owner...	.48
1262—	Eastern Add., N. Y., fr.	3	190—	1894.	Unknown Owner...	.27
1267—	Home Add., N. Y., fr.	4	195—	1894-5.	R. Van Buskirk....	.30
1268—	Home Add., N. Y.	5	195—	1893-4-5.	R. Van Buskirk....	2.62
1269—	Home Add., N. Y.	6	195—	1893-4-5.	R. Van Buskirk....	3.52
1270—	Home Add., N. Y.	7	195—	1893-4-5.	R. Van Buskirk....	3.52
1271—	Home Add., N. Y.	8	195—	1893-4-5.	R. Van Buskirk....	3.52
1272—	Home Add., N. Y.	11	195—	1893-4-5.	R. Van Buskirk....	18.06
1273—	Home Add., N. Y., fr.	13	195—	1893-4-5.	R. Van Buskirk....	2.59
1274—	Home Add., N. Y., fr.	14	1894-5.		R. Van Buskirk....	.30
1275—	Home Add., N. Y.	9	196—	1894-5.	Unknown Owner...	2.36
1276—	Home Add., N. Y.	10	196—	1894-5.	Unknown Owner...	2.36
1277—	Home Add., N. Y.	11	196—	1894-5.	Unknown Owner...	2.36
1278—	Home Add., N. Y.	12	196—	1894-5.	Unknown Owner...	2.36
1279—	Home Add., N. Y.	13	196—	1894-5.	Unknown Owner...	2.36
1280—	Home Add., N. Y.	14	196—	1894-5.	Unknown Owner...	2.36
1281—	Home Add., N. Y.	15	196—	1894-5.	Unknown Owner...	2.36
1282—	Home Add., N. Y.	16	196—	1894-5.	Unknown Owner...	2.36
1283—	Home Add., N. Y.	3	197—	1895.	Unknown Owner...	.80

No. C/D.	Description.	Sec. or lot.	Tp. or block.	Year.	Assessed to.	Amt.
1301—	Goodwin's Annex to Eastern Add., to No. Yak., fr.	1	209—	1894-5.	Unknown Owner...	.40
1302—	Goodwin's Annex to Eastern Add., to No. Yak., fr.	2	209—	1894-4-5.	Unknown Owner...	1.85
1303—	Goodwin's Annex to Eastern Add., to No. Yak., fr.	3	209—	1893-4-5	Unknown Owner....	2.00
191						
1304—	Goodwin's Annex to Eastern Add., to No. Yak., fr.	4	209—	1893-4-5.	Unknown Owner....	2.25
1305—	Goodwin's Annex to Eastern Add., to No. Yak..	5	209—	1893-4-5.	Unknown Owner....	2.57
1306—	Goodwin's Annex to Eastern Add., to No. Yak...	6	209—	1893-4-5.	Unknown Owner....	2.57
1307—	Goodwin's Annex to Eastern Add., to No. Yak...	7	209—	1893-4-5.	Unknown Owner....	2.57
1308—	Goodwin's Annex to Eastern Add., to No. Yak...	8	209—	1893-4-5.	Unknown Owner....	2.57
1309—	Goodwin's Annex to Eastern Add., to No. Yak...	9	209—	1893-4-5.	Unknown Owner....	2.57
1310—	Goodwin's Annex to Eastern Add., to No. Yak...	10	209—	1893-4-5.	Unknown Owner....	2.57
1311—	Goodwin's Annex to Eastern Add., to No. Yak...	11	209—	1893-4-5.	Unknown Owner....	2.57
1312—	Goodwin's Annex to Eastern Add., to No. Yak...	12	209—	1893-4-5.	Unknown Owner....	2.57
1313—	Goodwin's Annex to Eastern Add., to No. Yak...	13	209—	1893-4-5.	Unknown Owner....	2.57
1314—	Goodwin's Annex to Eastern Add., to No. Yak...	14	209—	1893-4-5.	Unknown Owner....	2.57
1315—	Goodwin's Annex to Eastern Add., to No. Yak., fr.	15	209—	1894-5.	Unknown Owner....	.91
1316—	North Yakima	4	209—	1894.	D. F. Bennett.....	26.25
1337—	Home Add., No. Yakima, fr.	7	215—	1891-3-4-5.	Unknown Owner....	3.08
1338—	Home Add., No. Yakima, fr.	8	215—	1891-2-3-4-5.	Unknown Owner....	5.31
1339—	Home Add., No. Yakima..	9	215—	1893-4-5.	Unknown Owner....	3.52
1340—	Home Add., No. Yakima..	10	215—	1893-4-5.	Unknown Owner....	2.62
1341—	Home Add., No. Yakima, fr.	11	215—	1891-4-5.	Unknown Owner....	2.89
1342—	Home Add., No. Yakima, fr.	14	217—	1894-5.	J. H. Thomas.....	1.66
1343—	Home Add., No. Yakima, fr.	15	217—	1894-5.	J. H. Thomas.....	1.20
1344—	Home Add., No. Yakima, fr.	16	217—	1893-4-5.	J. H. Thomas.....	1.45
1352—	North Yakima	1	228—	1894.	M. L. Masters.....	9.46
1353—	North Yakima	2	228—	1894.	M. L. Masters.....	9.46
192						
1381—	North Yakima	11	223—	1893-4-5.	F. D. Shaver.....	6.57
1382—	North Yakima	12	223—	1893-4-5.	F. D. Shaver.....	6.57
1386—	Syndicate Subdivision, fr..	6	247—	1895.	W. C. Reves.....	1.21
1387—	Syndicate Subdivision, fr..	7	247—	1894-5.	Unknown Owner....	.40
1388—	Syndicate Subdivision, fr..	9	247—	1895.	W. C. Reves.....	.40
1389—	Syndicate Subdivision, fr..	10	247—	1895.	W. C. Reves.....	1.41

No. C/D.	Description.	Sec. or lot.	Tp. or block.	Year.	Assessed to.	Amt.
1390—	Syndicate Subdivision	15	247—	1895.	Frank Affeck.....	2.01
1397—	North Yakima, fr.....	11	249—	1891-2-3-4-5.	Unknown Owner....	7.74
1398—	North Yakima, fr.....	12	241—	1891-2-3-4-5.	Unknown Owner....	8.83
1399—	Ker's Second Add. to North Yakima, fr.....	11	249—	1893-4-5.	Unknown Owner....	3.35
1400—	Ker's Second Add. to North Yakima, fr.....	12	245—	1893-4-5.	Unknown Owner....	2.24
1413—	Ker's Second Add. to North Yakima	15	252—	1891-2-3-4-5.	Unknown Owner....	9.22
1414—	Ker's Second Add. to North Yakima	16	252—	1891-2-3-4-5.	Unknown Owner....	9.22
1415—	Ker's Second Add. to North Yakima	5	253—	1893-4.	Fred Parker.....	5.74
1416—	Ker's Second Add. to North Yakima	6	253—	1893-4.	Fred Parker.....	35.41
1417—	Ker's Second Add. to North Yakima	9	254—	1891-2-3-4-5.	Unknown Owner....	6.92
1418—	North Yakima	10	254—	1891-2-3-4-5.	Unknown Owner....	6.92
1419—	North Yakima	13	254—	1893-4-5.	Mary J. Moore....	3.93
1420—	Syn. Subdivision, fr.....	16	266—	1894.	Unknown Owner....	.27
1440—	Syn. Subdivision, fr.....	11	268—	1895.	Unknown Owner....	1.41
1488—	Ker's Add. to N. Yakima..	6	372—	1894-5.	Unknown Owner....	3.30
1503—	Ker's Add. to N. Yakima..	9	273—	1891-3-4-5.	W. F. Morrison....	6.09
1504—	Ker's Add. to N. Yakima..	10	273—	1891-3-4-5.	W. F. Morrison....	6.09
1505—	Ker's Add. to N. Yakima..	11	273—	1891-3-4-5.	W. F. Morrison....	6.09
1506—	Ker's Add. to N. Yakima..	12	273—	1891-3-4-5.	W. F. Morrison....	6.09
1507—	Ker's Add. to N. Yakima..	13	273—	1891-3-4-5.	W. F. Morrison....	6.09
1516—	Syndicate Sub.	1	286—	1895.	W. C. Reves.....	1.21
1517—	Syndicate Sub., fr.....	2	286—	1895.	W. C. Reves.....	1.21
1518—	Syndicate Sub., fr.....	4	286—	1895.	W. C. Reves.....	.80
1519—	Syndicate Sub.....	15	286—	1895.	W. C. Reves.....	1.21
1520—	Syndicate Sub.....	16	286—	1895.	W. C. Reves.....	1.21
1521—	Syndicate Sub.....	14	287—	1895.	W. C. Reves.....	1.21
1527—	Syndicate Sub., fr.....	9	288—	1895.	W. C. Reves.....	.20
1581—	Ker's Add. to N. Yakima, fr.	8	292—	1894-5.	Unknown Owner....	.48
193-215						
1590—	Ker's Add. to N. Yakima, fr.	9	293—	1894.	Unknown Owner....	.52
1607—	Syndicate Sub., fr.....	1	306—	1891-2-4-5.	Unknown Owner....	4.63
1608—	Syndicate Sub., fr.....	2	306—	1891-4-5.	Unknown Owner....	3.10
1609—	Syndicate Sub.....	1	307—	1894-5.	W. C. Reves.....	2.86
1610—	Syndicate Sub.....	2	307—	1895.	W. C. Reves.....	1.02
1611—	Syndicate Sub., fr.....	3	307—	1895.	W. C. Reves.....	1.02
1612—	Syndicate Sub., fr.....	4	307—	1895.	W. C. Reves.....	1.02
1613—	Syndicate Sub., fr.....	5	307—	1895.	W. C. Reves.....	.80
1614—	Syndicate Sub., fr.....	6	307—	1895.	W. C. Reves.....	.61
1615—	Syndicate Sub., fr.....	7	307—	1895.	W. C. Reves.....	.41
1616—	Syndicate Sub., fr.....	8	307—	1895.	W. C. Reves.....	.21
1617—	Ker's Second Add. to North Yakima, fr.....	16	307—	1895.	Unknown Owner....	.52
1664—	Capitol Add., N. Yakima..	9	312—	1892-3-4-5.	Carrie M. Reed....	10.33
1655—	Capitol Add., N. Yakima..	10	312—	1892-3-4-5.	Carrie M. Reed....	10.33
1666—	Capitol Add., N. Yakima..	11	312—	1892-3-4-5.	Carrie M. Reed....	22.64
1716—	Capitol Add., N. Yakima, fr.	1	316—	1894.	Unknown Owner....	.27
1717—	Capitol Add., N. Yakima, fr.	2	316—	1894.	Unknown Owner....	.27
1737—	Ker's Second Add. to North Yakima	8	330—	1891-2-3-4-5.	Unknown Owner....	9.02
1851—	Ker's Second Add. to North Yakima, all of.....		352—	1892-3.	Unknown Owner....	45.35

No. C/D.	Description.	Sec. or lot.	Tp. or block.	Year.	Assessed to.	Amt.
1852—	Ker's Second Add. to North Yakima, all of.....		353—	1892-3.	Unknown Owner....	45.37
1912—	Ker's Second Add. to North Yakima, all of.....		372—	1892-3.	Unknown Owner....	45.37
1913—	Ker's Second Add. to North Yakima, all of.....		373—	1892-3.	Unknown Owner....	45.37
2086—	Bartholet's Add. to North Yakima	5	337—	1892-3-4-5.	John Bartholet.....	4.14
2087—	Bartholet's Add. to North Yakima	6	337—	1892-3-4-5.	John Bartholet.....	4.14
2088—	Bartholet's Add. to North Yakima	7	337—	1892-3-4-5.	John Bartholet.....	4.14
2089—	Bartholet's Add. to North Yakima	8	337—	1892-3-4-5.	John Bartholet.....	4.14
2090—	Bartholet's Add. to North Yakima	9	337—	1892-3-4-5.	John Bartholet.....	4.14
2091—	Bartholet's Add. to North Yakima	10	337—	1892-3-4-5.	John Bartholet.....	4.14

* * * * *

216 All of said lands described as being in some city, or addition thereto, being in accordance with the official plat of said city or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington; and all of the above-described lands being situated in Township and Range North and East of the Willamette Meridian.

All of said amounts bearing interest at the rate of fifteen per cent per annum from said 31st day of January, 1898, until paid; and you are further notified that the County of Yakima will apply to the Superior Court of the State of Washington, in and for said County, for a judgment foreclosing its lien against the property hereinbefore mentioned; and you are hereby summoned to appear within sixty days after the first publication of this summons, exclusive of the first day of publication, to wit, within sixty days after the 1st of November, 1901, and defend this action or pay the amount due, together with costs; and in case of your failure so to do, judgment will be rendered foreclosing the lien for said Certificate of Delinquency, penalty, interest and costs, against the lands and premises hereinbefore mentioned.

Any pleading or process may be served upon the undersigned at the address hereinafter stated.

W. P. GUTHRIE.

Prosecuting Attorney for Yakima County, Washington.

P. O. Address, North Yakima, Yakima County, Washington.

[Endorsements]: Yakima County vs. Whitson et al.
217 Summons for Publication in Foreclosure of Tax Lien. Filed
January 8th, 1902. G. L. Allen, County Clerk. By J. W.
Day, Deputy.

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: that I have carefully compared the above, foregoing and within with the original Summons for Publication in Foreclosure of Tax Lien in the foregoing and within entitled action, and that the same is a full, true and correct copy of said Summons for Publication in the Foreclosure of Tax Lien, and of the whole thereof, and of the endorsements thereon, as the same now appears on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said Court, at North Yakima, Washington, this 3d day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington in
and for the County of Yakima.]

(Signed) R. K. NICHOLS,
*County Clerk of Yakima County, Washington,
and ex-Officio Clerk of said Court.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, hereby certify: That I am the Judge of the Superior Court of the State of Washington, in and for the county of Yakima, and the presiding Justice of said
218 Court; that said court is a court of record; that R. K. Nichols is and at the date of the foregoing certificate was the Clerk of said Court, and that the foregoing attestation in the name of said R. K. Nichols, and bearing the seal of said Court is in due form and by the proper officer, and is by the laws of the State of Washington admissible as evidence in the courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, 1907.

(Signed) H. B. RIGG,
*Judge of the Superior Court of the State of
Washington in and for Yakima County.*

[Endorsed:] Complainant's Exhibit "B." (Signed) Lillian Van Brundt, Special Examiner.

COMPLAINANT'S EXHIBIT "C."

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

vs.

EDWARD WHITSON, A. F. SWITZER, MAGGIE N. MILLER, SARAH Claggett, Mrs. Amelia Hamel, Needham & Masters, Northern Pacific Railroad Company, Mrs. E. Zenovitch, John A. Stone, Wm. D. Inveriaty, Mrs. A. L. Churchill, Wm. Shaw, Mary A. Beard, C. V. Fowler, Fred Mehler, Julia R. Scudder, Miller & Staggs, T. L. Bounds, J. G. Boyle, Mrs. F. E. Butler, F. M. Harshberger, Robert E. Lewis, Grafton & Batch, Jane Wilson, Frank Wheeler, Rob't P. Maynard, R. Van Buskirk, D. F. Bennett, J. H. Thomas, M. L. Masters, F. D. Shaver, W. C. Reves, Frank Affeck, Fred Parker, Mary J. Moore, Carrie M. Reed, Ontario Land Company, John Bartholet, Joseph Ley, Keith Dunlop, J. H. Needham, Frank H. Luce, C. A. Congdon, John A. Williams, W. L. Steinweg, Trustee; J. H. Thomas, Trustee; Fred Colmorgen, Mrs. Phoebe D. Adams, A. B. Weed, A. Churchill Estate, Mrs. F. E. Adkins, C. R. Goodwin, Alex. McAllister, S. O. Morford, Wm. Z. York, S. E. Jones, A. McCracken, Prosser Falls Irrigation Company, M. Ward, Saluskin (Indian), D.W. Simmons, D. R. Fish, A. C. Campbell, Jr., James Gleed, J. M. Evans, Amanda A. Barton, John W. Walters, Maggie N. Clark, W. J. Robbins, P. T. Gervais, Isaac Taylor, S. W. Vestal, W. A. Sargent, Mrs. L. French and B. H. Smith, Clifton Clemon, O. Vansycle, J. B. Reavis, P. J. Flint, I. N. Power (Receiver B. E. Snipes), Mrs. L. J. May, B. Scatchard, J. L. Smith, Wm. L. Splawn, H. S. Rowe, J. W. Kleed, Walter Yonkin, Stephen Forsyth, Eric Ulvis, Joe Hooker, Yakima Investment Company, C. O. Swain, W. L. Bass, J. E. Steffins, S. Lightle, Ben Rosencrans, I. W. Dudley, W. C. Ely, W. L. Lamont, Mrs. S. Conway, H. N. Clark, C. J. Beach, D. W. Owen, S. M. Thurber, Wm. R. Evans, C. B. Carson, Nelson Williams, Chas. N. Simpson, Y. I. & I. C. Co., D. C. Stephens, F. P. Speck, David Miller, Y. I. & Improvement Co., Steel & Harshberger, J. E. Steffins, A. S. Paul, Frank Foster, W. W. Kent, Helen P. Smith, and All Persons Unknown, if Any, Having or Claiming to Have an Interest in and to the Real Property Hereinafter Described, Defendants.

Judgment in Foreclosure of Tax Lien and Order of Sale.

This cause having this 2d day of September, 1902, been brought to be heard upon the application for judgment foreclosing tax lien filed herein, and the defendants and each of them having been duly served with notice as by law required, and no appearance having been made by said defendants or either of them, and upon the proofs adduced,

it appearing to the Court that the statements and allegations set forth in said application are true, the Court finds as follows:

That the plaintiff herein is the owner and holder of Certificate of Delinquency issued on the 31st day of January, 1898, by the County of Yakima, State of Washington, the same being for taxes then due and delinquent, together with penalty interest and costs thereon, upon real property situate in said County, assessed to the defendants herein for the years and in the amount hereinafter stated.

221 That more than five years have elapsed since the original date of delinquency of the taxes for the year 1895, which are included in said certificate of delinquency.

That there is now due plaintiff herein for said Certificate of Delinquency, and for penalty, interest and costs thereon, upon each piece, parcel or tract hereinafter described, the amount set opposite thereto.

That plaintiff herein has a good and lawful lien against each and every tract, piece and parcel of land hereinafter described for the amount set opposite thereto.

That summons and notice has been duly served in this proceeding as required by the Statute of this State and such Statute complied with in all other respects pertaining thereto.

It is therefore adjudged, ordered and decreed that plaintiff herein be given judgment against the property hereinafter described, for the amount of plaintiff's lien, together with interest, costs and disbursements, which said judgment shall be a several judgment against each tract or lot, or part of a tract or lot of land, hereinafter mentioned, in the amounts set opposite thereto.

286, North Yakima, lot 23, block 7, taxes for 1891, '2, '3, '4 & 1895, amounting to \$16.62, interest \$11.48, costs \$.10, total \$28.20, assessed to unknown owner.

294, North Yakima, lot 9, block 8, taxes for 1895, amounting to \$4.03, interest \$2.78, costs \$.10, total \$6.91, assessed to Edward Whitson.

312, North Yakima, lot 16, block 10, taxes for the years 1891, 1893-4-5, amounting to \$207.88, interest \$143.44, costs \$.10, 222 total \$351.42, assessed to unknown owner.

317, North Yakima, lot 23, block 10, taxes for 1891-2-3-4-5, amounting to \$135.67, interest \$93.61, costs \$.10, total \$229.38, assessed to Maggie N. Miller.

318, North Yakima, lot 24, block 10, taxes for 1891-2-3-4-5, amounting to \$54.09, interest \$37.32, costs \$.10, total \$91.51, assessed to Maggie N. Miller.

334, North Yakima, lot 8, block 12, taxes for 1892-3-4-5, amounting to \$32.17, interest \$22.19, costs \$.10, total \$54.46, assessed to Sarah Claggett.

335, North Yakima, lot 9, block 12, taxes for 1892-3-4-5, amounting to \$32.17, interest \$22.19, costs \$.10, total \$54.46, assessed to Sarah Claggett.

336, North Yakima, lot 10, block 12, taxes for 1892-3-4-5, amounting to \$32.17, interest \$22.19, costs \$.10, total \$54.46, assessed to Sarah Claggett.

342, North Yakima, lot 20, block 12, taxes for 1892-3-4-5, amounting to \$24.18, interest \$16.69, costs \$.10, total \$40.97, assessed to Sarah Claggett.

343, North Yakima, lot 21, block 12, taxes for 1892-3-4-5, amounting to \$24.18, interest \$16.69, costs \$.10, total \$40.97, assessed to Sarah Claggett.

344, North Yakima, lot 22, block 12, taxes for 1894, and 1895, amounting to \$16.18, interest \$5.17, costs \$.10, total \$21.45, assessed to unknown owner.

345, North Yakima, lot 23, block 12, taxes for 1894-1895, amounting to \$14.33, interest \$9.89, costs \$.10, total \$24.32, assessed to unknown owner.

346, North Yakima, lot 24, block 12, taxes for 1894-1895, amounting to \$14.33, interest \$9.89, costs \$.10, total \$24.32, assessed to unknown owner.

223 347, North Yakima, lot 25, block 12, taxes for 1894-1895, amounting to \$16.96, interest \$11.71, costs \$.10, total \$28.77, assessed to unknown owner.

348, North Yakima, lot 26, block 12, taxes for 1894-1895, amounting to \$17.35, interest \$11.97, costs \$.10, total \$29.42, assessed to unknown owner.

351, North Yakima, lot 3, block 13, taxes for 1891-2-3-4-5, amounting to \$24.85, interest \$17.15, costs \$.10, total \$42.10, assessed to unknown owner.

352, North Yakima, lot 4, block 13, taxes for 1891-2-3-4-5, amounting to \$31.05, interest \$21.44, costs \$.10, total \$52.59, assessed to unknown owner.

371, North Yakima, lot 32, block 13, taxes for 1891-2-3-4-5, amounting to \$49.89, interest \$34.42, costs \$.10, total \$84.41, assessed to unknown owner.

402, North Yakima, lot 8, block 15, taxes for 1893-4-5, amounting to \$52.92, interest \$36.51, costs \$.10, total \$89.53, assessed to Mrs. Amelia Hamel.

522, North Yakima, lot 13, block 32, taxes for 1892-3-4-5, amounting to \$29.01, interest \$20.02, costs \$.10, total \$29.13, assessed to Sarah Claggett.

523, North Yakima, lot 14, block 32, taxes for 1892-3-4-5, amounting to \$28.61, interest \$19.74, costs \$.10, total \$48.45, assessed to Sarah Claggett.

524, North Yakima, lot 20, block 32, taxes for 1893-4-5, amounting to \$20.12, interest \$13.88, costs \$.10, total \$34.10, assessed to unknown owner.

525, North Yakima, lot 21, block 32, taxes for 1893-4-5, amounting to \$20.12, interest \$13.88, costs \$.10, total \$34.10, assessed to unknown owner.

224 533, North Yakima, lot 4, block 33, taxes for 1894, amounting to \$5.25, interest \$3.62, costs \$.10, total \$8.97, assessed to N. P. Railroad Company.

604, North Yakima, fr. lot 12, block 42, taxes for 1893-4-5, amounting to \$4.04, interest \$2.79, costs \$.10, total \$6.93, assessed to W. D. Inverarity.

662, North Yakima, lot 9, block 52, taxes for 1891-2-3-4-5, amounting to \$22.93, interest \$15.82, costs \$.10, total \$38.85, assessed to unknown owner.

663, North Yakima, lot 10, block 52, taxes for 1891-2-3-4-5, amounting to \$22.13, interest \$15.28, costs \$.10, total \$37.15, assessed to unknown owner.

686, North Yakima, lot 1, block 54, taxes for 1895, amounting to \$12.08, interest \$8.33, costs \$.10, total \$20.51, assessed to Wm. Shaw.

\$6.87, North Yakima, lot 2, block 54, taxes for 1895, amounting to \$6.45, interest \$4.45, costs \$.10, total \$11.00, assessed to Wm. Shaw.

693, North Yakima, lot 15, block 54, taxes for 1894-5, amounting to \$10.61, interest \$7.33, costs \$.10, total \$18.04, assessed to Mary A. Beard.

695, North Yakima, N. $\frac{1}{2}$ of lot 5, block 55, taxes for 1891-2-3-4-5, amounting to \$9.28, interest \$6.41, costs \$.10, total \$15.79, assessed to C. V. Fowler.

703, North Yakima, lot 4, block 56, taxes for 1895, amounting to \$19.33, interest \$13.34, costs \$.10, total \$32.77, assessed to unknown owner.

711, North Yakima, lot 16, block 56, taxes for 1893-4-5, amounting to \$9.09, interest \$6.27, costs \$.10, total \$15.46, assessed to unknown owner.

225 722, North Yakima, lot 14, block 57, taxes for 1893-4-5, amounting to \$5.64, interest \$3.90, costs \$.10, total \$9.64, assessed to unknown owner.

792, North Yakima, lot 11, block 73, taxes for 1892-3-4-5, amounting to \$14.73, interest \$10.16, costs \$.10, total \$24.99, assessed to Sarah Claggett.

793, North Yakima, lot 12, block 73, taxes for 1892-3-4-5, amounting to \$14.73, interest \$10.16, costs \$.10, total \$24.99, assessed to Sarah Claggett.

797, North Yakima, lot 7, block 74, taxes for 1894-5, amounting to \$6.43, interest \$4.44, costs \$.10, total \$10.97, assessed to unknown owner.

798, North Yakima, lot 8, block 74, taxes for 1894-1895, amounting to \$6.83, interest \$4.68, costs \$.10, total \$11.61, assessed to unknown owner.

801, North Yakima, lot 16, block 74, taxes for 1892-3-4-5, amounting to \$37.87, interest \$26.13, costs \$.10, total \$64.10, assessed to T. L. Bounds.

804, North Yakima, lot 9, block 76, taxes for 1893-4-5, amounting to \$5.68, interest \$3.92, costs \$.10, total \$9.70, assessed to unknown owner.

805, North Yakima, lot 10, block 76, taxes for 1893-4-5, amounting to \$5.28, interest \$3.67, costs \$.10, total \$9.05, assessed to unknown owner.

880, North Yakima, lot 5, block 94, taxes for 1894-5, amounting to \$5.58, interest \$3.85, costs \$.10, total \$9.53, assessed to Mrs. F. E. Butler.

889, North Yakima, lot 5, block 95, taxes for 1894-5, amounting to \$4.24, interest \$2.92, costs \$.10, total \$7.26, assessed to F. M. Harshberger.

226 912, North Yakima, fr. lot 13, block 102, taxes for 1891-3-4-5, amounting to \$3.68, interest \$2.54, costs \$.10, total \$6.32, assessed to unknown owner.

1007, North Yakima, lot 7, block 15, taxes for 1892-1894-5, amounting to \$5L.15, interest \$35.29, costs \$.10, total \$86.54, assessed to unknown owner.

1008, North Yakima, lot 8, block 115, taxes for 1892-1894-5, amounting to \$4.39, interest \$3.02, costs \$.10, total \$7.51, assessed to unknown owner.

1144, North Yakima, lot 6, block 137, taxes for 1891-2-3-4-5, amounting to \$6.69, interest \$4.61, costs \$.10, total \$11.40, assessed to unknown owner.

1145, North Yakima, lot 7, block 137, taxes for 1891-2-3-4-5, amounting to \$6.69, interest \$4.61, costs \$.10, total \$11.40, assessed to unknown owner.

1146, North Yakima, lot 8, block 137, taxes for 1891-2-3-4-5, amounting to \$6.69, interest \$4.61, costs \$.10, total \$11.40, assessed to unknown owner.

1190, Huson's Add. to North Yakima, fr. lot 16, block 151, taxes for 1894-1895, amounting to \$3.84, interest \$2.65, costs \$.10, total \$6.59, assessed to unknown owner.

1191, Home Add. to North Yakima, fr. lot 8, block 154, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1192, Home Add. to North Yakima, fr. lot 9, block 154, taxes for 1891-3-4-5, amounting to \$5.23, interest \$3.61, costs \$.10, total \$8.94, assessed to unknown owner.

1199, College Add. to North Yakima, fr. lot 7, block 167, 227 taxes for 1894-5, amounting to \$.48, interest \$.33, costs \$.10, total \$.91, assessed to unknown owner.

1230, Huson's Add. to North Yakima, fr. lot 7, block 172, taxes for 1894-5, amounting to \$1.85, interest \$1.28, costs \$.10, total \$3.23, assessed to unknown owner.

1231, Huson's Add. to North Yakima, fr. lot 8, block 172, taxes for 1891-3-4-5, amounting to \$10.40, interest \$7.18, costs \$.10, total \$17.68, assessed to unknown owner.

1232, Huson's Add. to North Yakima, fr. lot 9, block 172, taxes for 1894-5, amounting to \$1.85, interest \$1.28, costs \$.10, total \$3.23, assessed to unknown owner.

1233, Home Add. to North Yakima, fr. lot 2, block 175, taxes for 1891-2-3-4-5, amounting to \$5.47, interest \$3.78, costs \$.10, total \$9.33, assessed to unknown owner.

1234, Home Add. to North Yakima, lot 15, block 175, taxes for 1894-5, amounting to \$2.36, interest \$1.63, costs \$.10, total \$4.09, assessed to Frank Wheeler.

1235, Home Add. to North Yakima, lot 16, block 175, taxes for 1894-5, amounting to \$15.40, interest \$10.64, costs \$.10, total \$26.14, assessed to Frank Wheeler.

1249, Easter Add. to North Yakima, fr. lot 3, block 189, taxes for 1894, amounting to \$.31, interest \$.22, costs \$.10, total \$.63, assessed to Robert P. Maynard.

1257, Eastern Add. to North Yakima, fr. lot 13, block 189, taxes for 1894, amounting to \$.31, interest \$.22, costs \$.10, total 228 \$.63, assessed to unknown owner.

1261, Huson's Add. to North Yakima, fr. lot 4, block 190, taxes for 1894-5, amounting to \$.48, interest \$.33, costs \$.10, total \$.91, assessed to unknown owner.

1262, Huson's Add. to North Yakima, fr. lot 3, block 190, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1267, Home Add. to North Yakima, fr. lot 4, block 195, taxes for 1894-5, amounting to \$.30, interest \$.21, costs \$.10, total \$.61, assessed to R. Van Buskirk.

1268, Home Add. to North Yakima, lot 5, block 195, taxes for 1893-4-5, amounting to \$2.62, interest \$1.81, costs \$.10, total \$4.53, assessed to R. Van Buskirk.

1269, Home Add. to North Yakima, lot 6, block 195, taxes 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to R. Van Buskirk.

1270, Home Add. to North Yakima, lot 7, block 195, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to R. Van Buskirk.

1271, Home Add. to North Yakima, lot 8, block 195, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to R. Van Buskirk.

1272, Home Add. to North Yakima, lot 11, block 195, taxes for 1893-4-5, amounting to \$18.06, interest \$12.47, costs \$.10, 229 total \$30.63, assessed to R. Van Buskirk.

1273, Home Add. to North Yakima, fr. lot 13, block 195, taxes for 1893-4-5, amounting to \$2.59, interest \$1.78, costs \$.10, total \$4.47, assessed to R. Van Buskirk.

1274, Home Add. to North Yakima, fr. lot 14, block 195, taxes for 1894-5, amounting to \$.30, interest \$.21, costs \$.10, total \$.61, assessed to R. Van Buskirk.

1283, Home Add. to North Yakima, lot 3, block 197, taxes for 1895, amounting to \$.80, interest \$.55, costs \$.10, total \$1.45, assessed to unknown owner.

1301, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot, block 209, taxes for 1894-5, amounting to \$.46, interest \$.32, costs \$.10, total \$.86, assessed to unknown owner.

1302, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 2, block 209, taxes for 1893-4-5, amounting to \$1.85, interest \$1.28, total \$3.23, assessed to unknown owner.

1303, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 3, block 209, taxes for 1893-4-5, amounting to \$2.00, interest \$1.38, costs \$.10, total \$3.48, assessed to unknown owner.

1304, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 4, block 209, taxes for 1893-4-5, amounting to \$2.25, interest \$1.55, costs \$.10, total \$3.90, assessed to unknown owner.

1305, Goodwin's Annex to Eastern Add. to North Yakima, lot 5, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1306, Goodwin's Annex to Eastern Add. to North Yakima, lot 6, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1307, Goodwin's Annex to Eastern Add. to North Yakima, lot 7, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1308, Goodwin's Annex to Eastern Add. to North Yakima, lot 8, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1309, Goodwin's Annex to Eastern Add. to North Yakima, lot 9, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1310, Goodwin's Annex to Eastern Add. to North Yakima, lot 10, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1311, Goodwin's Annex to Eastern Add. to North Yakima, lot 11, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1312, Goodwin's Annex to Eastern Add. to North Yakima, lot 12, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1313, Goodwin's Annex to Eastern Add. to North Yakima, lot 13, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1314, Goodwin's Annex to Eastern Add. to North Yakima, lot 14, block 209, taxes for 1893-4-5, amounting to \$2.57, interest \$1.77, costs \$.10, total \$4.44, assessed to unknown owner.

1315, Goodwin's Annex to Eastern Add. to North Yakima, fr. lot 15, block 209, taxes for 1894-5, amounting to \$.91, interest \$.63, costs \$.10, total \$1.64, assessed to unknown owner.

1337, Home Add. to North Yakima, fr. lot 7, block 215, taxes for 1891-2-3-5, amounting to \$3.08, interest \$2.13, costs \$.10, total \$5.31, assessed to unknown owner.

1338, Home Add. to North Yakima, fr. lot 8, block 215, taxes for 1891-2-3-4-5, amounting to \$5.31, interest \$3.67, costs \$.10, total \$9.08, assessed to unknown owner.

1339, Home Add. to North Yakima, lot 9, block 215, taxes for 1893-4-5, amounting to \$3.52, interest \$2.43, costs \$.10, total \$6.05, assessed to unknown owner.

1340, Home Add. to North Yakima, lot 10, block 215, taxes for 1893-4-5, amounting to \$2.62, interest \$1.81, costs \$.10, total \$4.53, assessed to unknown owner.

1341, Home Add. to North Yakima, fr. lot 11, block 215, taxes for 1891-1894-5, amounting to \$2.89, interest \$1.99, costs \$.10, total \$4.98, assessed to unknown owner.

1342, Home Add. to North Yakima, fr. lot 14, block 217, taxes

for 1894-5, amounting to \$1.66, interest \$1.15, costs \$.10, total \$2.91, assessed to J. H. Thomas.

1343, Home Add. to North Yakima, fr. lot 15, block 217, taxes for 1894-5, amounting to \$1.20, interest \$.83, costs \$.10, total \$2.13, assessed to J. H. Thomas.

1344, Home Add. to North Yakima, fr. lot 16, block 217, taxes for 1893-4-5, amounting to \$1.45, interest \$1.00, costs \$.10, total \$2.55, assessed to J. H. Thomas.

1381, North Yakima, lot 11, block 233, taxes for 1893-4-5, amounting to \$6.57, interest \$4.54, costs \$.10, total \$11.21, assessed to F. D. Shaver.

1382, North Yakima, lot 12, block 233, taxes for 1893-4-5, amounting to \$6.57, interest \$4.54, costs \$.10, total \$11.21, assessed to F. D. Shaver.

1387, Syndicate Subdivision, fr. lot 7, block 247, taxes for 1894-5, amounting to \$.40, interest \$.28, costs \$.10, total \$.78, assessed to unknown owner.

1397, North Yakima, fr. lot 11, block 249, taxes for 1891-2-3-4-5, amounting to \$7.74, interest \$5.34, costs \$.10, total \$13.18, assessed to unknown owner.

1398, North Yakima, fr. lot 12, block 249, taxes for 1891-2-3-4-5, amounting to \$8.83, interest \$6.10, costs \$.10, total \$15.03, assessed to unknown owner.

1399, Ker's Second Add. to North Yakima, fr. lot 11, block 249, taxes for 1893-4-5, amounting to \$3.35, interest \$2.31, costs \$.10, total \$5.76, assessed to unknown owner.

1400, Ker's Second Add. to North Yakima, fr. lot 12, block 249, taxes for 1893-4-5, amounting to \$2.24, interest \$1.54, costs \$.10, total \$3.88, assessed to unknown owner.

1413, North Yakima, lot 15, block 252, taxes for 1891-2-3-4-5, amounting to \$9.22, interest \$6.36, costs \$.10, total \$15.68, assessed to unknown owner.

1414, North Yakima, lot 16, block 252, taxes for 1891-2-3-4-5, amounting to \$9.22, interest \$6.36, costs \$.10, total \$15.68, assessed to unknown owner.

1415, North Yakima, lot 2, block 233, taxes for 1893-4, amounting to \$5.74, interest \$3.96, costs \$.10, total \$9.80, assessed to Fred Parker.

1416, North Yakima, lot 6, block 253, taxes for 1893-4, amounting to \$35.41, interest \$24.45, costs \$.10, total \$59.96, assessed to Fred Parker.

1417, North Yakima, lot 9, block 254, taxes for 1891-2-3-4-5, amounting to \$6.92, interest \$4.77, costs \$.10, total \$11.79, assessed to unknown owner.

1418, North Yakima, lot 10, block 254, taxes for 1891-2-3-4-5, amounting to \$6.92, interest \$4.75, costs \$.10, total \$11.79, assessed to unknown owner.

1419, North Yakima, lot 13, block 254, taxes for 1893-4-5, amounting to \$3.93, interest \$2.71, costs \$.10, total \$6.74, assessed to Mary J. Moore.

1420, Syndicate Subdivision, fr. lot 16, block 266, taxes for 1894,

amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1503, Ker's Add. to North Yakima, lot 9, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1504, Ker's Add. to North Yakima, lot 10, block 273, taxes for 1891-2-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1505, Ker's Add. to North Yakima, lot 11, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1506, Ker's Add. to North Yakima, lot 12, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1507, Ker's Add. to North Yakima, lot 13, block 273, taxes for 1891-3-4-5, amounting to \$6.09, interest \$4.20, costs \$.10, total \$10.39, assessed to W. F. Morrison.

1581, Ker's Add. to North Yakima, fr. lot 8, block 292, taxes for 1894-5, amounting to \$.48, interest \$.34, costs \$.10, total \$.92, assessed to unknown owner.

1590, Ker's Add. to North Yakima, lot 9, block 293, taxes for 1894, amounting to \$.52, interest \$.36, costs \$.10, total \$.98, assessed to unknown owner.

1607, Syndicate Subdivision, fr. lot 1, block 306, taxes for 1891-2-3-4-5, amounting to \$4.63, interest \$3.20, costs \$.10, total \$7.93, assessed to unknown owner.

1608, Syndicate Subdivision, fr. lot 2, block 306, taxes for 1891-4-5, amounting to \$3.10, interest \$2.14, costs \$.10, total \$5.34, assessed to unknown owner.

1617, Ker's Second Add. to North Yakima, fr. lot 16, block 307, taxes for 1894, amounting to \$.52, interest \$.36, costs \$.10, total \$.98, assessed to unknown owner.

1664, Capital Add. to North Yakima, lot 9, block 312, taxes for 1892-3-4-5, amounting to \$10.33, interest \$7.13 costs \$.10, total \$17.56, assessed to Carrie N. Reed.

1665, Capital Add. to North Yakima, lot 10, block 312, taxes for 1892-3-4-5, amounting to \$10.33, interest \$7.13, costs \$.10, total \$17.56, assessed to Carrie N. Reed.

1666, Capital Add. to North Yakima, lot 11, block 312, taxes for 1892-3-4-5, amounting to \$22.64, interest \$15.62, costs \$.10, total \$38.36, assessed to Carrie N. Reed.

1716, Capital Add. to North Yakima, fr. lot 1, block 316, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1717, Capital Add. to North Yakima, fr. lot 2, block 316, taxes for 1894, amounting to \$.27, interest \$.19, costs \$.10, total \$.56, assessed to unknown owner.

1851, Capital Add. to North Yakima, all of block 352, taxes for 1892-3, amounting to \$45.35, interest \$31.29, costs \$.10, total \$76.64, assessed to unknown owner.

1852, Capital Add. to North Yakima, all of Block 353, taxes for

1892-3, amounting to \$45.37, interest \$31.30, costs \$.10, total \$76.77, assessed to unknown owner.

1912, Capital Add. to North Yakima, all of block 372, 236-272 taxes for 1892-3, amounting to \$45.37, interest \$31.30, costs \$.10, total \$76.77 assessed to unknown owner.

1913, Capital Add. to North Yakima, all of block 373, taxes for 1892-3, amounting to \$45.37, interest \$31.30, costs \$.10, total \$76.77, assessed to unknown owner.

2109, Bartholet's Add. to North Yakima, lot 1, block 357, taxes 1893-4-5, amounting to \$2.86, interest \$1.98, costs \$.10, total \$4.94, assessed to Joseph Ley.

2110, Bartholet's Add. to North Yakima, lot 2, block 357, taxes 1893-4-5, amounting to \$2.86, interest \$1.98, costs \$.10, total \$4.94, assessed to Joseph Ley.

2111, Bartholet's Add. to North Yakima, lot 3, block 357, taxes for 1893-4-5, amounting to \$2.86, interest \$1.98, costs \$.10, total \$4.94, assessed to Joseph Ley.

2112, Bartholet's Add. to North Yakima, lot 14, block 357, taxes for 1893-4-5, amounting to \$2.86, interest \$1.98, costs \$.10, total \$4.94, assessed to Joseph Ley.

2113, Bartholet's Add. to North Yakima, lot 15, block 357, taxes for 1893-4-5, amounting to \$2.86, interest \$1.98, costs \$.10, total \$4.94, assessed to Joseph Ley.

2114, Bartholet's Add. to North Yakima, lot 16, block 357, taxes for 1893-4-5, amounting to \$2.86, interest \$1.98, costs \$.10, total \$4.94, assessed to Joseph Ley.

2115, Eshelman's Add. to North Yakima, lot 9, block 357, taxes for 1891-2-3-4-5, amounting to \$6.02.

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273 5490, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 17-7-31, taxes for 1892-3-4, amounting to \$1.60, interest \$1.10, costs \$.10, total \$2.80, assessed to unknown owner.

5491, S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 17-7-31, taxes for 1892-3-4, amounting to \$3.24, interest \$2.23, costs \$.10, total \$5.57, assessed to unknown owner.

5492, E. $\frac{3}{4}$ of S. $\frac{1}{4}$, Sec. 31-7-31, taxes for 1892-5, amounting to \$4.58, interest \$3.16, costs \$.10, total \$7.84, assessed to unknown owner.

5811, Lot 4, Sec. 18-14-27, taxes for 1894-5, amounting to \$1.09, interest \$.75, costs \$.10, total \$1.94, assessed to W. W. Kent.

4626, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 36-10-22, taxes for 1893-4-5, amounting to \$53.13, interest \$36.66, costs \$.10, total \$89.89, assessed to unknown owner.

4628, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 36-10-22, taxes for 1893-5, amounting to \$37.50, interest \$25.88, costs \$.10, total \$63.48, assessed to unknown owner.

3995, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 8-11-20, taxes for 1892-5, amounting to \$42.09, interest \$29.04, costs \$.10, total \$71.23, assessed to unknown owner.

5831, N. $\frac{1}{4}$ of E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 10-8-30, taxes

for 1894-5, amounting to \$2.06, interest \$1.45, costs \$.10, total \$3.51, assessed to W. R. Evans.

5833, N. 15 acres of W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 10-8-30, taxes for 1894-5, amounting to \$7.03, interest \$4.85, costs \$.10, total \$11.88, assessed to W. R. Evans.

All of said lands, described as being in some city, or addition thereto, being in accordance with official plat of said city,
274 or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington; and all of the above described lands being situate in township and range north and east of the Willamette Meridian.

Now, therefore, in the name of the State of Washington: You, Wm. B. Dudley, County Treasurer in and for said County, or your successor in office, are hereby ordered and directed to sell according to law, the premises hereinbefore mentioned, together with the appurtenances thereunto belonging, or so much thereof as may be necessary to satisfy the judgment herein, together with interest, costs and *and* accruing costs thereon.

(Signed)

FRANK H. RUDKIN.

[Seal of Superior Court, Yakima Co.]

G. L. ALLEN,

County Clerk and Clerk of the Superior Court,

By J. W. DAY, *Deputy.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, G. L. Allen, County Clerk and Clerk of the Superior Court, in and for said County, do hereby certify, that the foregoing is a full, true and correct copy of the Judgment in Foreclosure of Tax Lien and Order of Sale in the above-entitled cause, as the same appears
on record in my office.

275 In witness whereof, I have hereunto set my hand and the seal of said Court affixed, this — day of September, 1902.

County Clerk and Clerk of the Superior Court,

By ————,

Deputy.

STATE OF WASHINGTON,

County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court in and for said County and State, do hereby certify that the foregoing is a true, full and correct copy of the Judgment on Foreclosure of Tax Lien and Order of Sale in the foregoing and above-entitled cause as the same appears of record in this office.

Witness my hand and the Seal of the said Superior Court affixed, this 26th day of June A. D. 1907.

[Seal of the Superior Court of the State of Washington
in and for the County of Yakima.]

(Signed)

R. K. NICHOLS,

County Clerk and ex-Officio Clerk of the Superior Court,

By J. LENOX WARD,

Deputy Clerk.

[Endorsements:] Certified Copy, File No. 64. In the Superior Court of Yakima County, State of Washington. Yakima County, State of Washington, plaintiff, vs. Edward Whitson, et al. Judgment and Order of Sale. Filed for Record Sept. 2d, 1902, 276 and recorded in Vol. 1 of Tax Journal, page 520. G. L. Allen, County Clerk. By J. W. Day, Deputy.

Due and legal service of the within is hereby admitted this — day of —, 190—.

_____,
JONES & GUTHRIE,
Attorneys for —, North Yakima, Wash.

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk of Yakima County, in the State of Washington, and ex-officio clerk of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That the foregoing is a full, true and correct copy of the judgment in foreclosure of tax lien and order of Sale, in the foregoing entitled action, and of the endorsements thereon as the same now appear on file and of record in the Office of the Clerk of said Superior Court.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this 3d day of July, A. D. 1907.

[Seal of the Superior Court for the State of Washington
in and for Yakima County.]

(Signed) R. K. NICHOLS,
*County Clerk of Yakima County, Washington,
and ex-Officio Clerk of said Superior Court.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of
277 Washington, in and for Yakima County, do hereby certify:

That I am the Judge of the Superior Court of the State of Washington, in and for Yakima County, and the Presiding Justice of said Court; that said court is a court of record, and that R. K. Nichols is and ever since January 14th, 1907, has been County Clerk of Yakima County, in the State of Washington, and ex-officio Clerk of said Superior Court; that the foregoing attestation in the name of said R. K. Nichols and bearing the seal of said Superior Court and bearing date the 3d day of July, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible in evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed) H. B. RIGG,
*Judge of the Superior Court of the State
of Washington in and for Yakima County.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk of Yakima County, in the State of Washington, and Ex-officio Clerk of the superior Court of the State of Washington, in and for said Yakima County, do hereby certify: That the Honorable H. B. Rigg is, and was at the time of the making of the foregoing certificate, the duly elected, qualified and acting Judge of said Court, and that I know his signature, and that the signature to the foregoing certification is the genuine signature of said Judge.

278 Witness my hand and the seal of said Court, at North Yakima, Washington, this 3d day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington
in and for the County of Yakima.]

(Signed) R. K. NICHOLS,
County Clerk of Yakima County, Washington,
and ex-Officio Clerk of the Superior Court.

[Endorsed:] Complainant's Exhibit "C." (Signed) Lillian Van Brundt, Special Examiner.

COMPLAINANT'S EXHIBIT "D."

Affidavit of Publication.

STATE OF WASHINGTON,
County of Yakima, ss:

I, W. W. Robertson, being duly sworn, on oath depose and say that I am Editor and Publisher of the "Yakima Republic," a weekly newspaper published at North Yakima, in said County and State, and of general circulation in said County and State; that the notice hereunto appended, which is a summons by publication in foreclosure of Tax Lien, was printed and published in said newspaper for seven successive weeks as follows:

First publication, Friday November 1, 1901;
Second publication, Friday, November 8, 1901;
Third publication, Friday November 15, 1901;
Fourth publication, Friday November 22, 1901;
Fifth publication, Friday November 29, 1901;
Sixth publication, Friday December 6, 1901;
Seventh publication, Friday December 15, 1901;

279 and that said notice was published in said newspaper and not in a supplement each and all of the times above mentioned.

(Signed) W. W. ROBERTSON.

Subscribed and sworn to before me this 23d day of July, 1902.

[NOTARIAL SEAL.] (Signed) W. P. GUTHRIE,
Notary Public, Residing at North Yakima, Washington.

Filed July 23, 1902.

G. L. ALLEN,
County Clerk.
By J. W. DAY, Deputy.

[Endorsed:] Complainant's Exhibit "D." (Signed) Lillian Van Brundt, Special Examiner.

Summons for Publication in Foreclosure of Tax Lien.

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

vs.

EDWARD WHITSON, A. F. SWITZER, MAGGIE N. MILLER, SARAH Claggett, Mrs. Amelia Hamel, Needham & Masters, Northern Pacific Railroad Company, Mrs. E. Zenovitch, John A. Stone, Wm. D. Inveriaty, Mrs. A. L. Churchill, Wm. Shaw, Mary A. Beard, C. V. Fowler, Fred Mehler, Julia R. Scudder, Miller & Staggs, T. L. Boulds, J. G. Boyle, Mrs. F. E. Butler, F. M. Harshberger, Robert E. Lewis, Graft & Batch, Jane Wilson, R. Van Buskirk, D. F. Bennett, J. H. Thomas, M. L. Masters, F. D. Shaver, W. C. Reves, Frank Affeck, Fred Parker, Mary J. Moore, Carrie M. Reed, Ontario Land Company, John Bartholet, Joseph Ley, Keith Dunlop, J. H. Needham, Frank H. Luce, C. A. Congdon, John A. Williams, W. L. Steinweg, Trustee; J. H. Thomas, Trustee; Fred Colmotgen, Mrs. Phoebe D. Adams, A. B. Weed, A. Churchill Estate, Mrs. F. E. Adkins, C. R. Goodwin, Alex. McAllister, S. O. Murford, Wm. Z. York, S. E. Jones, A. McCracken, Prosser Falls Irrigation Company, M. Ward, Saluskin (Indian), D. W. Simmons, D. R. Fish, A. C. Campbell, Jr., James Gleed, J. M. Evans, Amanda A. Barton, John W. Walters, Maggie N. Clark, W. J. Robbins, P. T. Gervais, Isaac Taylor, S. W. Vestal, W. A. Sargent, Mrs. L. French and B. H. Smith, Clifton Cleman, O. Vansycle, J. B. Reavis, P. J. Flint, I. N. Powers (Receiver B. E. Snipes), Mrs. L. J. May, B. Scatchard, J. L. Smith, Wm. L. Splawn, H. S. Rowe, J. W. Kleed, Walter Yonkin, Stephen Forsythe, Eric Ulvis, Joe Hooker, S. O. Swain, B. L. Bass, J. E. Steffins, S. Lightle, Ben Rosencrans, I. W. Dudley, W. C. Ely, W. L. Lamont, Mrs. S. Conway, H. N. Clark, C. J. Beach, D. W. Owen, S. M. Thurber, Wm. R. Evans, C. B. Carlson, Nelson Williams, Chas. H. Simpson, Y. I. & I. Co., D. C. Stephens, F. P. Speck, David Millar, Y. I. & Improvement Company, Steel & Harshberger, J. E. Steffins, Frank Foster, W. W.

Kent, Helen P. Smith, and All Persons Unknown Having, or Claiming to Have, an Interest in and to the Real Property Hereinafter Described, Defendants.

The State of Washington to Edward Whitson, A. F. Switzer, Maggie N. Miller, Sarah Flagggett, Mrs. Amelia Hamel, Needham & Masters, Northern Pacific Railroad Company, Mrs. E. Zenovitch, John A. Stone, Wm. D. Inveriaty, Mrs. A. L. Churchill, Wm. Shaw, Mary A. Beard, C. V. Fowler, Fred Mehler, Julia R. Scudder, Miller & Staggs, T. L. Bounds, J. G. Boyle, Mrs. F. E. Butler, F. M. Harshberger, Robert E. Lewis, Grafton & Batch, Jane Wilson, Frank Wheeler, R. Van Buskirk, D. F. Bennett, J. H. Thomas, M. L. Master, F. D. Shaver, W. C. Reves, Frank Affeck, Fred Parker, Mary J. Moore, Carrie N. Reed, Ontario Land Company, John Bartholet, Joseph Ley, A. Congdon, John A. Williams, W. L. Steinweg, Trustee; J. H. Thomas, Trustee; Fred Colmorgen, Mrs. Phoebe D. Adams, A. B. Weed, A. Churchill Estate, Mrs. F. E. Adkins, C. R. Goodwin, Alex. McAllister, S. O. Morford, Wm. Z. York, S. E. Jones, A. McCracken, Prosser Falls Irrigation Company, M. Ward, Saluskin (Indian), D. W. Simmons, D. R. Fish, A. C. Campbell, Jr., 282 James Gleed, J. M. Evans, Amanda A. Barton, John W. Gervais, Isaac Taylor, S. W. Vestal, W. A. Sargent, Mrs. L. French and B. H. Smith, Clifton Cleman, O. Vansycle, J. B. Reavis, P. J. Flint, I. N. Power (Receiver B. E. Snipes), Mrs. L. J. May, B. Scatchard, J. L. Smith, Wm. L. Splawn, H. S. Rowe, J. W. Kleed, Walter Yonkin, Stephen Forseyth, Eric Ulvis, Joe Hooker, C. O. Swain, W. L. Bass, J. E. Steffins, S. Lightle, Ben Rosencranz, I. W. Dudley, W. C. Ely, W. L. Lamont, Mrs. S. Conway, Wm. R. Evans, C. B. Carlson, Nelson Williams, Charles H. Simpson, Y. I. & I. Company, D. C. Stephens, F. P. Speck, David Killer, Y. I. & Improvement Company, Steele & Harshberger, J. E. Steffins, Frank Foster, W. W. Kent, Helen P. Smith, and all persons unknown having, or claiming to have, an interest in and to the real property hereinafter described:

You and each of you are hereby notified that the County of Yakima, State of Washington, the plaintiff herein, is the holder of certificate of delinquency issued on the 31st day of January, 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with penalty, interest and costs thereon upon real property situate in said county, assessed to the defendants herein for the years and in the amount- hereinafter stated:

286—North Yakima, 1 23 b. 7, 1891-2-3-4-5, unknown owner	\$16.62
288—North Yakima, 1 29 b. 7, 1891-2-3-4-5, unknown owner	\$19.10
283 289—North Yakima, 1 30 b. 7, 1891-2-3-4-5, unknown owner	\$19.10

290—North Yakima, 1 31 b. 7, 1891-2-3-4-5, unknown owner	\$19.10
291—North Yakima, 1 32 b. 7, 1891-2-3-4-5, unknown owner	\$43.97
294—North Yakima, 1 9 b. 8, 1895, Edward Whitson	\$4.03
312—North Yakima, 1 16 b. 10, 1892-3-4-5, unknown owner	\$207.88
317—North Yakima, 1 25 b. 10, 1891-2-3-4-5, Maggie N. Miller	\$135.67
318—North Yakima, 1 24 b. 10, 1891-2-3-4-5, Maggie N. Miller	\$54.09
334—North Yakima, 1 8 b. 12, 1892-3-4-5, Sarah Claggett ..	\$32.17
335—North Yakima, 1 9 b. 12, 1892-3-4-5, Sarah Claggett ..	\$32.17
336—North Yakima, 1 10 b. 12, 1892-3-4-5, Sarah Claggett ..	\$32.17
342—North Yakima, 1 20 b. 12, 1892-3-4-5, Sarah Claggett ..	\$24.18
343—North Yakima, 1 21 b. 12, 1892-3-4-5, Sarah Claggett ..	\$24.18
344—North Yakima, 1 22 b. 12, 1894-5, unknown owner ..	\$16.18
345—North Yakima, 1 23 b. 12, 1894-5, unknown owner ..	\$14.33
346—North Yakima, 1 24 b. 12, 1894-5, unknown owner ..	\$14.33
347—North Yakima, 1 25 b. 12, 1894-5, unknown owner	\$16.96
284 348—North Yakima, 1 26 b. 12, 1894-5, unknown owner	\$17.35
351—North Yakima, 1 3 b. 13, 1891-2-3-4-5, unknown owner	\$24.85
352—North Yakima, 1 4 b. 13, 1891-2-3-4-5, unknown owner	\$31.05
371—North Yakima, 1 32 b. 13, 1891-2-3-4-5, unknown owner	\$49.89
402—North Yakima, 1 8 b. 15, 1893-4-5, Mrs. Amelia Hamel	\$52.92
508—North Yakima, n. hf. 1 23 b. 30, 1894, Needham & Masters	\$3.94
522—North Yakima, 1 13 b. 32, 1892-3-4-5, Sarah Claggett ..	\$29.01
523—North Yakima, 1 14 b. 32, 1892-3-4-5, Sarah Claggett ..	\$28.61
524—North Yakima, 1 10 b. 32, 1893-4-5, unknown owner ..	\$20.12
525—North Yakima, 1 21 b. 32, 1893-4-5, unknown owner ..	\$20.12
533—North Yakima, 1 4 b. 33, 1894, N. P. R. R. Co.	\$5.25
534—North Yakima, 1 5 b. 33, 1894, N. P. R. R. Co.	\$5.25
535—North Yakima, 1 6 b. 33, 1894, N. P. R. R. Co.	\$5.25
536—North Yakima, 1 7 b. 33, 1894, N. P. R. R. Co.	\$5.25
556—North Yakima, 1 1 b. 34, 1891-2-3-4-5, Mrs. E. Zenovitch	\$111.55
285 557—North Yakima, 1 2 b. 34, 1890-2-3, John A. Stone	\$52.60
4-5, Mrs. E. Zenovitch	\$29.13
578—North Yakima, 1 9 b. 35, 1892-3-4-5,	
579—North Yakima, 1 10 b. 35, 1892-3-4-5, John A. Stone ..	\$13.74
599—North Yakima, 1 7 b. 42, 1894-5, unknown owner ..	\$12.17
604—North Yakima, fr. 1 12 b. 42, 1893-4-5, Wm. D. Inveritay	\$4.04

624—North Yakima, 1 12 b. 48, 1894-5, Mars. A. L. Churchill	
662—North Yakima, 1 9 b. 52, 1891-2-3-4-5, unknown owner	\$16.71
663—North Yakima, 1 10 b. 52, 1891-2-3-4-5	\$22.93
686—North Yakima, 1 1 b. 54, 1895, Wm. Shaw	\$22.13
687—North Yakima, 1 2 b. 54, 1895, Wm. Shaw	\$2.08
693—North Yakima, 1 15 b. 54, 1894-5, Mary A. Beard	\$6.45
695—North Yakima, n. hf. 1 5 b. 55, 1891-2-3-4-5, C. V. Fowler	\$10.61
697—North Yakima, 1 6 c. 55, 1894-5, unknown owner	\$9.28
701—North Yakima, 1 1 b. 56, 1892-3-4-5, Fred Mehler	\$6.41
702—North Yakima, 1 2 b. 56, 1892-3-4-5, Fred Mehler	\$33.61
703—North Yakima, 1 4 b. 56, 1895, unknown owner	\$15.87
286 708—North Yakima, 1 12 b. 56, 1895, Miller & Staggs	\$19.33
709—North Yakima, s. hf. 1 13 b. 56, 1898, Miller & Staggs	\$2.42
710—North Yakima, 1 15 b. 56, 1893-4-5, unknown owner	\$1.21
711—North Yakima, 1 16 b. 56, 1893-4-5, unknown owner	\$7.89
720—North Yakima, 1 12 b. 57, 1891, Julia R. Scudder	\$9.09
722—North Yakima, 1 14 b. 57, 1893-4-5, unknown owner	\$3.14
723—North Yakima, 1 15 b. 57, 1891, unknown owner	\$5.64
792—North Yakima, 1 11 b. 73, 1892-3-4-5, Sarah Claggett	\$3.14
793—North Yakima, 1 12 b. 73, 1892-3-4-5, Sarah Claggett	\$14.75
797—North Yakima, 1 7 b. 74, 1894-5, unknown owner	\$14.73
798—North Yakima, 1 8 b. 74, 1894-5, unknown owner	\$6.43
801—North Yakima, 1 16 b. 74, 1892-3-4-5, T. L. Bounds	\$6.83
804—North Yakima, 1 9 b. 76, 1893-4-5, unknown owner	\$37.87
805—North Yakima, 1 10 b. 76, 1893-4-5, unknown owner	\$5.68
843—North Yakima, 1 11 b. 85, 1892-3-4-5, unknown owner	\$5.28
876—North Yakima, 1 1 b. 94, 1895, unknown owner	\$10.24
287 877—North Yakima, 1 2 b. 94, 1895, unknown owner	\$2.82
878—North Yakima, 1 3 b. 1895, unknown owner	\$2.41
880—North Yakima, 1 5 b. 94, 1894-5, Mrs. F. E. Butler	\$2.41
889—North Yakima, 1 5 b. 95, 1894-5, F. M. Harshberger	\$5.58
901—North Yakima, 1 12 b. 96, 1895, Robert E. Lewis	\$4.24
912—North Yakima, fr. 1 13 b. 102, 1891-3-4-5, unknown owner	\$0.80
941—North Yakima, 1 16 b. 105, 1891, unknown owner	\$3.68
950—North Yakima, 1 13 b. 107, 1891-2-3-4-5, unknown owner	\$2.73
955—North Yakima, 1 5 b. 108, 1891-2-3, Grafton & Batch	\$13.03
1007—North Yakima, 1 7 b. 115, 1892-4-5, unknown owner	\$7.44
1008—North Yakima, 1 8 b. 115, 1892-4-5, unknown owner	\$51.15
1052—North Yakima, 1 16 b. 125, 1894-5, Jane Wilson	\$4.39
	\$14.25

1144—North Yakima, 1 6 b. 137, 1891-2-3-4-5, unknown owner	\$6.69
1145—North Yakima, 1 7 b. 137, 1891-2-3-4-5, unknown owner	\$6.69
1146—North Yakima, 1 8 b. 137, 1891-2-3-4-5, unknown owner	\$6.69
1181—Huson's Add. N. Yakima, 1 15 b. 149, 1892-3-4-5, unknown owner	\$8.16
288 1183—Huson's Add. N. Yakima, 1 14 b. 149, 1892-3-4-5, unknown owner.....	\$8.16
1190—Huson's Add. N. Yakima, fr. 1 16 b. 151, 1894-5, unknown owner	\$3.84
1191—Home Add. N. Yakima, fr. 18 b. 154, 1894, unknown owner	\$0.27
1192—Home Add. North Yakima, fr. 1 9 b. 154, 1891-3-4-5, unknown owner.....	\$5.23
1196—College Add. N. Yakima, 1 13 b. 166, 1893-4-5, unknown owner.....	\$3.74
1197—College add. N. Yakima, 1 14 b. 166, 1893-4-5, unknown owner.....	\$13.62
1199—College add. N. Yakima, fr. 1 7 b. 167, 1894-5, unknown owner	\$0.48
1200—College add. N. Yakima, fr. 1 9 b. 167, 1894, unknown owner	\$0.27
1230—Huson's add. N. Yakima, fr. 1 7 b. 172, 1894-5, unknown owner.....	\$1.85
1231—Huson's add. N. Yakima, fr. 1 8 b. 172, 1891-3-4-5, unknown owner	\$10.40
1232—Huson's add. N. Yakima, fr. 1 9 b. 172, 1894-5, unknown owner	\$1.85
1233—Home add. N. Yakima, fr. 1 2 b. 175, 1891-2-3-4-5, unknown owner	\$5.47
1234—Home add. N. Yakima, 1 15 b. 175, 1894-5, Frank Wheeler	\$2.36
1235—Home add. N. Yakima, 1 16 b. 175, 1894-5, Frank Wheeler	\$15.40
1249—Eastern add. N. Yakima, fr. 1 3 b. 189, 1894, Robt. P. Maynard	\$0.31
1251—Eastern add. N. Yakima, 1 9 b. 189, 1891-2-3-4-5, unknown owner	\$6.91
289 1252—Eastern add. N. Yakima, 1 10 b. 189, 1891-2-3-4-5, unknown owner.....	\$6.91
1257—Eastern add. N. Yakima, fr. 1 13 b. 189, 1894, unknown owner.....	6.91
1261—Huson's add. N. Yakima, fr. 1 4 b. 190, 1894-5, unknown owner.....	\$0.46
1262—Huson's add. N. Yakima, fr. 1 3 b. 190, 1894, unknown owner.....	\$0.27
1267—Home add. N. Yakima, fr. 1 4 b. 195, 1893-4-5, R. Van Buskirk.....	\$0.30

1268—Home add. N. Yakima, 1 5 b. 195, 1893-4-5, R. Van Buskirk.....	\$2.62
1269—Home add. N. Yakima, 1 6 b. 195, 1893-4-5, R. Van Buskirk.....	\$3.52
1270—Home add. N. Yakima, 1 7 b. 195, 1893-4-5, R. Van Buskirk.....	\$3.52
1271—Home add. N. Yakima, 1 8 b. 195, 1893-4-5, R. Van Buskirk.....	\$3.52
1272—Home add. N. Yakima, 1 11 b. 195, 1893-4-5, R. Van Buskirk.....	\$18.06
1273—Home add. N. Yakima, fr. 1 13 b. 195, 1893-4-5, R. Van Buskirk.....	\$2.59
1274—Home add. N. Yakima, fr. 1 14 b. 195, 1894-5, R. Van Buskirk.....	\$0.30
1275—Home add. N. Yakima, 1 9 b. 196, 1894-5, unknown owner	\$2.36
1276—Home add. N. Yakima, 1 10 b. 196, 1894-5, unknown owner	\$2.36
1277—Home add. N. Yakima, 1 11 b. 196, 1894-5, unknown owner	\$2.36
1278—Home add. N. Yakima, 1 12 b. 196, 1894-5, unknown owner	\$2.36
290 1279—Home add. N. Yakima, 1 13 b. 196, 1894-5, owner	\$2.36
1280—Home add. N. Yakima, 1 14 b. 196, 1894-5, unknown owner	\$2.36
1281—Home add. N. Yakima 1 14 b. 196, 1894-5, unknown owner	\$2.86
1281—Home add. N. Yakima, 1 15 b. 196, 1894-5, unknown owner	\$2.36
1282—Home add. N. Yakima, 1 16 b. 196, 1894-5, unknown owner	\$2.36
1283—Home add. N. Yakima, 1 3 b. 197, 1895, unknown owner	\$0.80
1301—Goodwin's Annex to Eastern Add. to N. Yakima, fr. 1 1 b. 209, 1894-5, unknown owner.....	\$0.46
1302—Goodwin's Annex to Eastern Add. to N. Yakima, fr. 1 2 b. 209, 1893-4-5, unknown owner.....	\$1.85
1303—Goodwin's Annex to Eastern Add. to N. Yakima, fr. 1 c. b. 209, 1893-4-5, unknown owner.....	\$2.09
1304—Goodwin's Annex to Eastern Add. to N. Yakima, fr. 1 4 b. 209, 1893-4-5, unknown owner.....	\$2.25
1305—Goodwin's Annex to Eastern Add. to N. Yakima, 1 5 b. 209, 1893-4-5, unknown owner.....	\$2.57
1306—Goodwin's Annex to Eastern Add. to N. Yakima, 1 6 b. 209, 1893-4-5, unknown owner.....	\$2.57
291 1307—Goodwin's Annex to Eastern Add. to N. Yakima, 1 7 b. 209, 1893-4-5, unknown owner..	\$2.57
1308—Goodwin's Annex to Eastern Add. to N. Yakima, 1 8 b. 209, 1893-4-5, unknown owner.....	\$2.57

1309—Goodwin's Annex to Eastern Add. to N. Yakima, 1 9 b. 209, 1893-4-5, unknown owner.....	\$2.57
1310—Goodwin's Annex to Eastern Add. to N. Yakima, 1 10 b. 209, 1893-4-5, unknown owner.....	\$2.57
1311—Goodwin's Annex to Eastern Add. to N. Yakima, 1 11 b. 209, 1893-4-5, unknown owner.....	\$2.57
1312—Goodwin's Annex to Eastern Add. to N. Yakima, 1 12 b. 209, 1893-4-5, unknown owner.....	\$2.57
1313—Goodwin's Annex to Eastern Add. to N. Yakima, 1 13 b. 209, 1893-4-5, unknown owner.....	\$2.57
1314—Goodwin's Annex to Eastern Add. to N. Yakima, 1 14 b. 209, 1893-4-5, unknown owner.....	\$2.57
1315—Goodwin's Annex to Eastern Add. to N. Yakima, fr. 1 15 b. 209, 1894-5, unknown owner.....	\$0.91
1316—North Yakima, 1 4 b. 209, 1894, D. F. Bennett....	\$26.26
1337—Home add. N. Yakima, fr. 1 7 b. 215, 1891-3-4-5, unknown owner.....	\$3.08
292 1338—Home add. N. Yakima, fr. 1 8 b. 215, 1891- 2-3-4-5, unknown owner.....	\$5.31
1339—Home add. N. Yakima, 1 9 b. 215, 1893-4-5, un- known owner.....	\$3.52
1340—Home add. N. Yakima, 1 10 b. 215, 1893-4-5, un- known owner.....	\$2.62
1341—Home add. N. Yakima, fr. 1 11 b. 215, 1891-4-5, unknown owner.....	\$2.89
1342—Home add. N. Yakima, fr. 1 14 b. 217, 1894-5, J. H. Thomas	\$1.66
1343—Home add. N. Yakima, fr. 1 15 b. 217, 1894-5, J. H. Thomas	\$1.20
1344—Home add. N. Yakima, fr. 1 16 b. 217, 1893-4-5, J. H. Thomas.....	\$1.45
1352—North Yakima, 1 1 b. 228, 1894, M. L. Masters....	\$9.46
1353—North Yakima, 1 2 b. 228, 1894, M. L. Masters....	\$9.46
1381—North Yakima, 1 11 b. 233, 1893-4-5, F. D. Shaver..	\$6.57
1382—North Yakima, 1 12 b. 233, 1893-4-5, F. D. Shaver..	\$6.57
1386—Syndicate subdiv., fr. 1 6 b. 247, 1895, W. C. Reves..	\$1.21
1387—Syndicate subdiv., fr. 1 7 b. 247, 1894-5, unknown owner	\$0.40
1388—Syndicate subdiv., fr. 1 9 b. 247, 1895, W. C. Reves..	\$0.13
1389—Syndicate subdiv., fr. 1 10 b. 247, 1895, W. C. Reves	\$1.41
1390—Syndicate subdiv., 1 15 b. 247, 1895, Frank Affeck	\$2.01
293 1397—North Yakima, fr. 1 11 b. 249, 1891-2-3-4-5, unknown owner.....	\$7.74
1398—North Yakima, fr. 1 12 b. 249, 1891-2-3-4-5, un- known owner.....	\$8.83
1399—Ker's Second add. to N. Yakima, fr. 1 11 b. 249, 1893-4-5, unknown owner.....	\$3.35
1400—Ker's Second add. to N. Yakima, fr. 1 12 b. 249, 1893-4-5, unknown owner.....	\$2.24

1413—North Yakima, 1 15 b. 252, 1891-2-3-4-5, unknown owner	\$9.22
1414—North Yakima, 1 16 b. 252, 1891-2-3-4-5, unknown owner	\$9.22
1415—North Yakima, 1 5 b. 253, 1893-4, Fred Parker....	\$5.74
1416—North Yakima, 1 6 b. 253, 1893-4, Fred Parker....	\$35.41
1417—North Yakima, 1 9 b. 254, 1891-2-3-4-5, unknown owner	\$6.92
1418—North Yakima, 1 10 b. 254, 1891-2-3-4-5, unknown owner	\$6.92
1419—North Yakima, 1 12 b. 254, 1893-4-5, Mary J. Moore	\$3.93
1420—Syndicate subdiv., fr. 1 16 b. 266, 1894, unknown owner	\$0.27
1440—Syndicate subdiv., fr. 1 11 b. 268, 1895, unknown owner	\$1.41
1448—Ker's add. to N. Yakima, 1 6 b. 272, 1894-5, unknown owner.....	\$3.30
1503—Ker's add. to N. Yakima, 1 9 b. 273, 1891-3-4-5, W. F. Morrison.....	\$6.09
1504—Ker's add. to N. Yakima, 1 10 b. 273, 1891-3-4-5, W. F. Morrison.....	\$6.09
294 1505—Ker's add. to N. Yakima, 1 11 b. 273, 1891-3-4-5, W. F. Morrison.....	\$6.09
1506—Ker's add. to N. Yakima, 1 12 b. 273, 1891-3-4-5, W. F. Morrison.....	\$6.09
1507—Ker's add. to N. Yakima, 1 13 b. 273, 1891-3-4-5, W. F. Morrison.....	\$6.09
1516—Syndicate subdiv., 1 1 b. 286, 1895, W. C. Reves....	\$1.21
1517—Syndicate subdiv., fr. 1 2 b. 286, 1895, W. C. Reves	\$1.21
1518—Syndicate subdiv., fr. 1 14 b. 286, 1895, W. C. Reves	\$0.80
1519—Syndicate subdiv., 1 15 b. 286, 1895, W. C. Reves..	\$1.21
1520—Syndicate subdiv., 1 16 b. 286, 1895, W. C. Reves..	\$1.21
1521—Syndicate subdiv., 1 14 b. 287, 1895, W. C. Reves..	\$1.21
1527—Syndicate subdiv., fr. 1 9 b. 288, 1895, W. C. Reves..	\$0.20
1581—Ker's add. to N. Yakima, fr. 1 8 b. 292, 1894-5, unknown owner.....	\$0.48
1590—Ker's add. to N. Yakima, 1 9 b. 293, 1894, unknown owner	\$0.52
1607—Syndicate subdiv., fr. 1 1 b. 306, 1891-2-4-5, unknown owner.....	\$4.63
1608—Syndicate subdiv., fr. 1 2 b. 306, 1891-4-5, unknown owner	\$3.10
1609—Syndicate subdiv., 1 1 b. 307, 1894-5, W. C. Reves.....	\$2.86
295 1610—Syndicate subdiv., 1 2 b. 307, 1895, W. C. Reves	\$1.02
1611—Syndicate subdiv., fr. 1 3 b. 307, 1895, W. C. Reves..	\$1.02
1612—Syndicate subdiv., fr. 1 4 b. 307, 1895, W. C. Reves..	\$1.02
1613—Syndicate subdiv., fr. 1 5 b. 307, 1895, W. C. Reves..	\$0.80
1614—Syndicate subdiv., fr. 1 6 b. 307, 1895, W. C. Reves..	\$0.61
1615—Syndicate subdiv., fr. 1 7 b. 307, 1895, W. C. Reves..	\$0.41

1616—Syndicate subdiv., fr. 1 8 b. 307, 1895, W. C. Reves..	\$0.21
1617—Ker's add. to N. Yakima, fr. 1 16 b. 307, 1895, unknown owner	\$0.52
1664—Capital add. N. Yakima, 1 9 b. 312, 1892-3-4-5, Carrie N. Reed.....	\$10.33
1665—Capital add. N. Yakima, 1 10 b. 312, 1892-3-4-5, Carrie N. Reed.....	\$10.33
1666—Capital add. N. Yakima, 1 11 b. 312, 1892-3-4-5, Carrie N. Reed.....	\$22.64
1716—Capital add. N. Yakima, fr. 1 1 b. 316, unknown owner	\$0.27
1717—Capital add. N. Yakima, fr. 1 2 b. 316, 1894, unknown owner	\$0.27
1737—Ker's Second add. to N. Yakima, 8 b. 330, 1891-2-3-4-5, unknown owner.....	\$9.02
1851—Capital add. to N. Yakima, all of b. 352, 1892-3, unknown owner	\$45.38
1852—Capital add. N. Yakima, all of b. 353, 1892-3, unknown owner	\$45.37
296-333 1912—Capital add. N. Yakima, all of b. 372, 1892-3, unknown owner.....	\$45.37
1913—Capital add. N. Yakima, all of b. 373, 1892-3, unknown owner	\$45.37
2086—Bartholet's add. to N. Yakima, 1 5 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2087—Bartholet's add. to N. Yakima, 1 6 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2088—Bartholet's add. to N. Yakima, 1 7 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2089—Bartholet's add. to N. Yakima, 1 8 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2090—Bartholet's add. to N. Yakima, 1 9 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2091—Bartholet's add. to N. Yakima, 1 10 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2092—Bartholet's add. to N. Yakima, 1 11 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2093—Bartholet's add. to N. Yakima, 1 12 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2094—Bartholet's add. to N. Yakima, 1 13 b. 337, 1892-3-4-5, unknown owner.....	\$4.14
2095—Bartholet's add. to N. Yakima, 1 14 b. 337, 1892-3-4-5, unknown owner.....	\$4.14
2096—Bartholet's add. to N. Yakima, 1 15 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2097—Bartholet's add. to N. Yakima, 1 16 b. 337, 1892-3-4-5, John Bartholet.....	\$4.14
2098—Bartholet's add. to N. Yakima, 1 1 b. 338, 1892-3-4-5, John Bartholet.....	\$4.14
2099—Bartholet's add. to N. Yakima, 1 2 b. 338, 1892-3-4-5, John Bartholet.....	\$4.14

334	5783—Beach's 1st Add. to Dell Haven, lot 3, blk. 1, 1894-5, Frank Foster.....	\$0.50
5811	—lot 4, sec. 18, tp. 14, r. 27, 1894-5, W. W. Kent....	\$1.09
5814	—N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ sec. 22, tp. 8, r. 30, Helen P. Smith	\$0.22

All of said lands described as being in some city, or addition thereto, being in accordance with the official plat of said city, or addition thereto, on file and of record in the office of the county auditor of Yakima county, Washington; and all of the above-described lands being situated in township and range north and east of the Willamette Meridian. All of said amounts bearing interest at the rate of fifteen per cent per annum from said 31st day of January, 1898, until paid; and you are further notified that the said county of Yakima will apply to the superior court of the State of Washington, in and for said county, for a judgment foreclosing its lien against the property hereinbefore mentioned; and you are hereby summoned to appear within sixty days after the first publication of this summons, exclusive of the 1st day of publication, to wit, within sixty days after the first day of November, 1901, and defend this action or pay the amount due, together with costs; and in case of your failure so to do, judgment will be rendered foreclosing the lien of said certificate of delinquency, penalty, interest and costs, against the lands and premises hereinbefore mentioned. Any pleading or process may be served upon the undersigned at the address hereinafter stated.

(Signed)

W. P. GUTHRIE,

Plaintiff's Attorney.

Nov. 1, Dec. 13.

P. O. address, North Yakima, Yakima County, Washington.

STATE OF WASHINGTON,

County of Yakima, ss:

I, R. K. Nichols, County Clerk of Yakima County, in the State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That the foregoing is full, true and correct copy of the summons for publication in foreclosure of tax lien and affidavit of publication, in the foregoing entitled action, and of the endorsement thereon of the time of the filing thereof and of all endorsements thereon as the same now appear on file and of record in the office of the Clerk of said Superior Court.

In witness whereof I have hereunto set my hand and affixed the seal of our said Superior Court this 3d day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington in
and for the County of Yakima.]

(Signed)

R. K. NICHOLS,

County Clerk of Yakima County, Washington,

and ex-officio Clerk of said Superior Court.

336 STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, do hereby certify: That I am Judge of the Superior Court of the State of Washington, in and for Yakima County, and the presiding Justice of said court; that said court is a court of record, and that R. K. Nichols is and ever since January 14th, 1907, has been, County Clerk of Yakima County, in the State of Washington, and ex-officio Clerk of said Superior Court; that the foregoing attestation in the name of said R. K. Nichols and bearing the seal of said Superior Court and bearing date the 3d day of July, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible in evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed)

H. B. RIGG,
*Judge of the Superior Court of the State of
 Washington in and for Yakima County.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk of Yakima County, in the State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington, in and for said Yakima County, do hereby certify: That the Honorable H. B. Rigg, is and was at the
 337 time of the making of the foregoing certificate, the duly elected, qualified and acting Judge of said Court, and that I know his signature, and that the signature to the foregoing certification is the genuine signature of said Judge.

Witness my hand and the seal of said Court, at North Yakima, Washington, this 3d day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington in
 and for the County of Yakima.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, Washington,
 and ex-officio Clerk of said Court.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify that I have carefully compared the above, foregoing and within with the original judgment, judgment-roll, and files in the foregoing entitled action, which judgment, judgment-roll and files, I am the legal custodian, and have charge of the same as such custodian, and that the same is a full, true and correct copy and a transcript of said judgment, judgment-roll and files, and of the whole thereof, and of the endorsement on each of said files at

the time of the filing thereof and of each and every endorsement on said judgment, judgment-roll and files as the said judgment, judgment-roll and files now appear of record and on file in my office.

338 In witness whereof, I have hereunto set my hand and affixed the seal of said Court at North Yakima, Washington, this 3d day of July, A. D. 1907.

[Seal of the Superior Court for the State of Washington
in and for the County of Yakima.]

(Signed) R. K. NICHOLS,
*County Clerk of Yakima County, Washington,
and Ex-officio Clerk of said Superior Court.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify that I am the Judge of the Superior Court of the State of Washington, in and for the County of Yakima, and the presiding Justice of said Court; that said Court is a court of record; and that R. K. Nichols is, and was at the time of making the foregoing certificate, the Clerk of said Court, and that the foregoing attestation in the name of said R. K. Nichols, and bearing the seal of said Court and bearing date July 3d, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, 1907.

(Signed) H. B. RIGG,
*Judge of the Superior Court of the State of Wash-
ington in and for Yakima County, in said State.*

339 STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify that the Hon. H. B. Rigg, is and was at the time of making the foregoing certificate the duly elected, qualified and acting Judge of said Superior Court of the State of Washington, in and for Yakima County, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court, this 3d day of July, A. D. 1907.

[Seal of the Superior Court for the State of Washington
in and for the County of Yakima.]

(Signed) R. W. NICHOLS,
*County Clerk of Yakima County in the State of Wash-
ington, and ex-Officio Clerk of said Superior Court.*

[Endorsed:] Judgment-roll. Complainant's Exhibit "7."
(Signed) Lillian Van Brundt, Special Examiner.

COMPLAINANT'S EXHIBIT "8."

Warranty Deed.

This Indenture, Made this eighth day of January, in the year of our Lord one thousand nine hundred and six (1896), between
The Ontario Land Company, a corporation duly organized
340 and existing under and by virtue of the laws of Minnesota,
party of the first part, and Alfred L. Johnson, of North
Yakima, Washington, party of the second part: Witnesseth, That
the said party of the first part, for and in consideration of the
sum of Seven Hundred (\$700) Dollars, to it in hand paid by the
said party of the second part, the receipt whereof is hereby acknowl-
edged, has granted, bargained, sold and conveyed and by these pres-
ents does grant, bargain, sell and convey unto the said party of the
second part, his heirs or assigns, forever, all the following described
tracts, pieces or parcels of land, situate in the county of Yakima,
and State of Washington, and known and described as follows,
to wit:

Lots Seven (7) and Eight (8) in Block Four (4) in Heerman's
Addition to the City of North Yakima, according to the recorded
plat thereof.

To have and to hold the same, together all and singular, the
hereditaments and appurtenances thereunto belonging, or in any
wise appertaining, unto the said party of the second part, his heirs
and assigns, forever. And the said The Ontario Land Company,
party of the first part, does covenant with the said party of the second
part, his heirs and assigns, as follows: First, that it is lawfully seized
of said premises; second, that it has good right to convey the same;
third, that the same are free from all encumbrances; except taxes,
assessments and other charges which may have accrued against said
premises since March 14th, 1905; fourth, that the said party of the
second part, his heirs and assigns, shall quietly — and pos-
341 sess the same; and fifth, that the said title to the same against
all lawful claims, except said party of the first part will war-
rant and defend the taxes, assessments and other charges.

In testimony whereof, the said The Ontario Land Company has
caused these presents to be signed and its Corporate Seal to be here-
unto affixed by Chester A. Congdon, its Vice-President, and James
Wanless, its Secretary, the agents of the said Corporation, duly and
expressly appointed by it for the purpose of duly executing this
Instrument on behalf of the said Corporation, the day and year first
above written.

THE ONTARIO LAND COMPANY,
By CHESTER A. CONGDON,
Vice-President,
JAMES WANLESS, Secretary.

STATE OF WASHINGTON,
County of St. Louis, ss:

On the eighth day of January, A. D. 1906, before me appeared Chester A. Congdon, the Vice-President of the said The Ontario Land Company, and James Wanless, the Secretary of the said The Ontario Land Company, each to me personally known, and who being by me duly sworn, each for himself did say, the said Chester A. Congdon, that he is the Vice President, and the said James Wanless, that he is the Secretary of the aforesaid The Ontario Land Company, and they both did say that they are duly appointed agents of the said Corporation for the express purpose of executing
342 the foregoing instrument on behalf of the said Corporation, and that the seal affixed to said Instrument is the Corporate Seal of said Corporation and that said Instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and said Chester A. Congdon, and James Wanless, severally acknowledged said Instrument to be the free act and deed of said Corporation.

[NOTARIAL SEAL.]

LEE W. FARMER,
Notary Public, St. Louis County, Minnesota,
Residing at Duluth, Minn.

My Com. expires Jan. 15th, 1910.

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington, not appertaining to a Court.

I do further certify, that the within and foregoing instrument in writing is a full, true and correct copy of a warranty deed filed for record in this office on the 20th day of January, A. D. 1906, and recorded in Volume 40 of Deeds, page 335, of the Records of Deed, of said Yakima County, as appears from the record of said instrument now in this office.

343 In witness whereof, I have hereunto set my hand and affixed my official seal this 21st day of June, A. D. 1907.

[Seal of County Auditor for Yakima County, State of Washington.]

(Signed)

WILBUR CROCKER,
County Auditor of Yakima, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am

the Judge of the Superior Court of the State of Washington, in and for Yakima County, and the presiding Justice of said Court; that said Court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation in the name of said Wilbur Crocker, and bearing the seal of said County Auditor and bearing date June 21st, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed)

H. B. RIGG,

*Judge of the Superior Court of the State of
Washington in and for the County of
Yakima in said State.*

344 STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is and for more than two years last past continuously has been the duly elected, qualified and acting and commissioned Judge of the said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing Certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington
in and for the County of Yakima.]

(Signed)

R. W. NICHOLS,

*County Clerk of Yakima County, State of
Washington, and ex-Officio Clerk of said
Superior Court.*

[Endorsed:]

COMPLAINANT'S EXHIBIT "9."

This indenture, made this 27th day of March, in the year of our Lord one thousand nine hundred and six (1906), between The Ontario Land Company, a corporation duly organized and
345 existing under and by virtue of the laws of Minnesota, party of the first part, and Joseph E. Thompson of North Yakima, Washington, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of Three Hundred (\$300) Dollars to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed,

and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs or assigns, forever, all the following described tract, piece or parcel of land, situate in the County of Yakima, and State of Washington, and known and described as follows:

Lot Three (3) in Block Four (4) in Heerman's addition to the City of North Yakima, according to the recorded part thereof.

To have and to hold the same, together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever. And the said The Ontario Land Company, party of the first part, does covenant with the said party of the second part, his heirs, and assigns as follows:

First, that it is lawfully seized of said premises; second, that it has good right to convey the same; third, that the same are free from all incumbrances; except taxes, assessments and other charges which may have accrued against said premises since November 3d, 1905; fourth, that the said party of the second part,
346 his heirs and assigns, shall quietly enjoy and possess the same; and fifth, that the said party of the first part will warrant and defend the title to the same against all lawful claims, except said taxes, assessments and other charges.

In testimony whereof, the said The Ontario Land Company has caused these presents to be signed and its Corporate seal to be hereunto affixed by Chester A. Congdon, its Vice-President, and James Wanless, its Secretary, the agents of the said corporation duly and expressly appointed by it for the purpose of duly executing this instrument on behalf of the said corporation, the day and year first above written.

[Seal of The Ontario Land Company, Incorporated A. D. 1886, Saint Paul, Minn.]

THE ONTARIO LAND COMPANY,
By CHESTER A. CONGDON,
Vice-President.
JAMES WANLESS, *Secretary.*

Signed, sealed and delivered in presence of:

— — —

STATE OF MINNESOTA,

County of St. Louis, ss:

On this 27th day of March, A. D. 1906, before me, appeared Chester A. Congdon, the Vice-President of the said The Ontario Land Company, and James Wanless, the Secretary of the said The Ontario Land Company, each to me personally known, and who being by me duly sworn, each for himself did say, the
347 said Chester A. Congdon, that he is the Vice-President and the said James Wanless, that he is the Secretary of the aforesaid, The Ontario Land Company, and they both did say that they are duly appointed agents of the said Corporation for the express

purpose of executing the foregoing instrument on behalf of the said Corporation, and that the seal affixed to said instrument, is the Corporate Seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and said Chester A. Congdon, and James Wanless, severally acknowledged said instrument, to be the free act and deed of said Corporation.

[NOTARIAL SEAL.]

LEE W. FARMER,
Notary Public St. Louis County, Minnesota,
Residing at Duluth, Minn.

My Commission expires January 15, 1910.

Compared July 19th, 1907.

By W. CROCKER,
Co. Auditor.

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor for the County of Yakima, State of Washington, do hereby certify that the within and foregoing instrument in writing is a full, true and correct copy of a warranty deed filed for record in this office on the 24th day of June, A. D. 1907, at 12:55 P. M., and recorded in Volume 348 58, page 573, records of Yakima County, as appears from the record of said instrument now in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this 19th day of July, A. D. 1907.

[Seal of the County Auditor of Yakima County, Washington.]

(Signed)

WILBUR CROCKER,
County Auditor for the County of Yakima,
State of Washington.

[Endorsed:] Complainant's Exhibit "9." [Signed] Lillian Van Brundt, Special Examiner.

COMPLAINANT'S EXHIBIT "10."

Warranty Deed.

This indenture, made this 6th day of November, in the year of our Lord one thousand nine hundred and five (1905), between The Ontario Land Company, a corporation duly organized and existing under and by virtue of the laws of of Minnesota, party of the first part, and Josiah S. Burk of North Yakima, Washington, party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of Three Hundred (\$300)

Dollars to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed unto the said party of the second part, his heirs or assigns, forever, all the following described tract, piece or parcel of land, situate in the County of Yakima, and State of Washington, and known and described as follows, to wit:

349 Lot Five (5) of Block (4) in Heerman's Addition to the City of North Yakima, according to the recorded plat thereof.

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever. And the said The Ontario Land Company, party of the first part, does covenant with the said party of the second part, his heirs and assigns as follows: First, that it is lawfully seized of said premises; second, that it has good right to convey the same; third, that the same are free from all incumbrances; fourth, that the said party of the second part, his heirs and assigns, shall quietly enjoy and possess the same; and fifth, that the said party of the first part will warrant and defend the title to the same against all lawful claims.

In testimony whereof, the said The Ontario Land Company, has caused these presents to be signed and its Corporate Seal to be hereunto affixed by Chester A. Congdon its Vice-President, and James Wanless, its Secretary, the agents of the said Corporation duly and expressly appointed by it for the purpose of duly executing
350 this instrument on behalf of the said Corporation, the day and year first above written.

[Seal of The Ontario Land Company, Incorporated A. D.
1886. Saint Paul, Minn.]

THE ONTARIO LAND COMPANY,
By CHESTER A. CONGDON,

Vice-President.
JAMES WANLESS, *Secretary.*

STATE OF MINNESOTA,

County of St. Louis, ss:

On this 6th day of November, A. D. 1905, before me, appeared Chester A. Congdon, the Vice-President of the said The Ontario Land Company, and James Wanless, the Secretary of the said The Ontario Land Company, each to me personally known, and who being by me personally sworn, each for himself, did say, the said Chester A. Congdon, that he is the Vice-President and the said James Wanless, that he is the Secretary of the aforesaid The Ontario Land Company and they both did say that they are duly appointed agents of the said Corporation for the express purpose of executing the foregoing instrument on behalf of the said Corporation, and that the seal affixed to said instrument is the Corporate Seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors,

351 and said Chester A. Congdon and James Wanless, severally acknowledged said instrument to be the free act and deed of said Corporation.

[NOTARIAL SEAL.]

LEE W. FARMER,
Notary Public, St. Louis County, Minnesota,
Residing at Duluth, Minnesota.

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,

County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington, not appertaining to a Court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a Warranty Deed filed for record in this office on the 11th day of November, A. D. 1905, and recorded in Volume 38 of Deeds, page 198, of the Records of Deeds, of said Yakima County, as appears from the record of said instrument now in this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of June, A. D. 1907.

[Seal of County Auditor for Yakima County, State of Washington.]

(Signed)

WILBUR CROCKER,
County Auditor of the County of Yakima,
State of Washington.

352 STATE OF WASHINGTON.

County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington in and for the Yakima County, and the presiding Justice of said Court; that said Court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation in the name of said Wilbur Crocker, and bearing the seal of said County Auditor and bearing date June 21st, 1907, is in due form and by the proper officer, and is by laws of the State of Washington, admissible as evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed)

H. B. RIGG,
Judge of the Superior Court of the State of
Washington in and for the County of
Yakima in said State.

STATE OF WASHINGTON,

County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg
 353 is and for more than two years last past continuously has been the duly elected, qualified and acting and commissioned Judge of the said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington in and for the County of Yakima.]

(Signed)

R. K. NICHOLS,
County Clerk of Yakima County, State of Washington, and ex-Officio Clerk of said Superior Court.

[Endorsed.]

COMPLAINANT'S EXHIBIT "11."

This indenture, Made this 8th day of February, in the year of our Lord one thousand nine hundred and five (1905), between The Ontario Land Company, a corporation duly organized and existing under and by virtue of the laws of Minnesota, party of the first part, and S. J. Lowe, of the City of North Yakima, Washington, party of the second part:

Witnesseth: That the party of the first part, for and in consideration of the sum of Seven Hundred (\$700) Dollars, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and
 354 convey unto the said party of the second part, his heirs or assigns, forever, all the following described tracts, pieces or parcels of land situate in the county of Yakima and State of Washington, and known and described as follows, to wit:

Lots one (1) and two (2) in block three (3) in Heerman's Addition to the city of North Yakima, according to the recorded plat thereof.

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever. And the said The Ontario Land Company, party of the first part, does covenant with the said party of the second part, his heirs and assigns, as follows: First, that it is lawfully seized of said premises; second, that it has good right to convey the same; third, that the same are free from all incumbrances; fourth, that the said party of the second part, his heirs and assigns, shall

quietly enjoy and possess the same; and fifth, that the said party of the first part will warrant and defend the title to the same against all lawful claims.

In testimony whereof, the said The Ontario Land Company has caused these presents to be signed and its Corporate Seal to be hereunto affixed by Harry G. Heermans its President, and James Wanless its Secretary, the agents of the said Corporation duly and expressly appointed by it for the purpose of duly executing this
 355 instrument on behalf of the said Corporation, the day and year first above written.

[Seal of The Ontario Land Company, Incorporated A. D. 1886, Saint Paul, Minnesota.]

THE ONTARIO LAND COMPANY,
 By HARRY G. HEERMANS, *President*.
 JAMES WANLESS, *Secretary*.

STATE OF WASHINGTON,
Count of Chehalis, ss:

On this 27th day of February, A. D. 1905, before me appeared Harry G. Heermans, President, of the said The Ontario Land Company, to me personally known, and who being by me duly sworn, did say that he is President of the aforesaid The Ontario Land Company and that he is one of the duly appointed agents of the said Corporation for the express purpose of executing the foregoing instrument on behalf of the said Corporation, and that the seal affixed to said Instrument is the Corporate Seal of said Corporation, and that said Instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and said Harry G. Heermans, acknowledged said Instrument to be the free act and deed of said Corporation.

[Seal of Corporation. John Heermans. Oct. 25, 1907.]

JOHN HEERMANS,
Notary Public in and for the State of Washington,
Residing at Hoquiam, in said County.

356 STATE OF MINNESOTA,
County of St. Louis, ss:

On this 11th day of February, A. D. 1905, before me appeared James Wanless, the Secretary of the said The Ontario Land Company, to me personally known and who being by me personally sworn, did say that he is the Secretary of the aforesaid The Ontario Land Company, and that he is one of the duly appointed agents of the said Corporation for the express purpose of executing the foregoing instrument on behalf of the said Corporation, and that the seal affixed to said instrument is the Corporate Seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and said

James Wanless, acknowledged said instrument to be the free act and deed of said Corporation.

[Notarial Seal, St. Louis County, Minn.]

LEE W. FARMER,
*Notary Public, St. Louis County, Minnesota,
Residing at Duluth, Minn.*

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the
357 office of the County Auditor for the said County of Yakima, a public office of said State of Washington, not appertaining to a Court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a Warranty Deed filed for record in this office on the 18th day of October, A. D. 1905, and recorded in Volume 37 of Deeds, page 549, of the Records of Deeds, of said Yakima County, as appears from the record of said instrument now in this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of 21st, A. D. 1907.

[Seal of County Auditor for Yakima County, State of Washington.]

(Signed)

WILBUR CROCKER,
*County Auditor of the County of
Yakima, State of Washington.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding Justice of said Court; that said Court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation in the name of said Wilbur Crocker, and bearing the seal of said County Auditor and bearing
358 date June 21st, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the Courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

(Signed)

H. B. RIGG,
*Judge of the Superior Court of the State of
Washington in and for the County of
Yakima, in said State.*

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is and for more than two years last past continuously has been the duly elected, qualified and acting and commissioned Judge of the said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington in
and for the County of Yakima.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, State of Washington,
and ex-Officio Clerk of said Superior Court.*

[Endorsed.]

359

COMPLAINANT'S EXHIBIT "12."

This Indenture, made this 25th day of August, in the year of our Lord one thousand nine hundred and five (1905), between The Ontario Land Company, a corporation duly organized and existing under and by virtue of the laws of Minnesota, party of the first part, and Elizabeth Osborne of North Yakima, Washington, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of Three Hundred (\$300) Dollars, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said party of the second part her heirs or assigns, forever, all the following described tract, piece or parcel of land, situate in the County of Yakima, and State of Washington and known and described as follows, to wit:

Lot three (3) in block three (3) Heerman's Addition to North Yakima, according to the recorded plat thereof.

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, her heirs and

assigns, forever. And the said The Ontario Land Company, party of the first part, does covenant with the said party of the second part, her heirs and assigns, as follows: First, that it is lawfully seized of said premises: second, that it has good right to convey the same; third, and that the same are free from all incumbrances except taxes, assessments and other charges which may have accrued against said premises since the 10th day of February, 1905: fourth, that the said party of the second part, her heirs and assigns, shall quietly enjoy and possess the same; and fifth, that the said party of the first part, will warrant and defend the title to the same against all lawful claims, except said taxes, assessments and other charges.

In testimony whereof, the said The Ontario Land Company has caused these presents to be signed, and its Corporate Seal to be hereunto affixed by Chester A. Congdon, its Vice-President, and James Wanless, its Secretary, the agents of the said Corporation duly and expressly appointed by it for the purpose of duly executing this instrument on behalf of the said Corporation, the day and year first above written.

[Seal of The Ontario Land Company, Incorporated A. D. 1886, Saint Paul, Minn.]

THE ONTARIO LAND COMPANY,
By CHESTER A. CONGDON, *Vice-President*.
JAMES WANLESS, *Secretary*.

Signed, sealed and delivered in presence of:

— — —

361 STATE OF MINNESOTA,
County of St. Louis, ss:

On this 26th day of August, A. D. 1905, before me appeared Chester A. Congdon, the Vice-President of the said The Ontario Land Company, and James Wanless, the Secretary of the said The Ontario Land Company, each to me personally known, and who being by me duly sworn, each for himself, did say the said Chester A. Congdon, that he is the Vice-President, and the said James Wanless, that he is the Secretary of the aforesaid The Ontario Land Company, and they both did say that they are duly appointed agents of the said Corporation for the express purpose of executing the foregoing instrument on behalf of the said Corporation and that the seal affixed to said instrument is the Corporate Seal of said Corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Chester A. Congdon and James Wanless severally acknowledged said Instrument to be the free act and deed of said Corporation.

[NOTARIAL SEAL.]

LEE W. PALMER,
Notary Public, St. Louis County, Minnesota,
Residing at Duluth, Minn.

Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal
362 custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington, not appertaining to a Court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a Warranty Deed filed for record in this office on the 14th day of September, A. D. 1905, and recorded in Volume 37 of Deeds, page 176, of the Records of Deeds, of said Yakima County, as appears from the record of said instrument now in this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of June, A. D. 1907.

[Seal of County Auditor for Yakima County, State of Washington.]

(Signed) WILBUR CROCKER,
County Auditor of the County of Yakima,
State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding Justice of said Court; that said Court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation in the name of said Wilbur Crocker, and
363 bearing the seal of said County Auditor and bearing date June 21st, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the Courts of said State.

Witness my hand at North Yakima, Washington this — day of July, A. D. 1907.

(Signed) H. B. RIGG,
Judge of the Superior Court of the State of Washington
in and for the County of Yakima, in said State.

STATE OF WASHINGTON,
County of Yakima, ss:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is and for more

than two years last past continuously has been the duly elected, qualified and acting and commissioned Judge of the said Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said Judge.

Witness my hand and the seal of said Court at North Yakima, Washington, this 9th day of July, A. D. 1907.

[Seal of the Superior Court of the State of Washington in
and for the County of Yakima.]

(Signed)

R. K. NICHOLS,
*County Clerk of Yakima County, State of Wash-
ington, and ex-Officio Clerk of said Superior Court.*

[Endorsed.]

STATE OF WASHINGTON,

County of Yakima, ss:

This Indenture made this 13th day of September, A. D. 1902, between Wm. B. Dudley, as Treasurer of Yakima County, State of Washington, party of the first part, and C. H. Wilfong, party of the second part:

Witnesseth, That, whereas, at a public sale of real estate held on the 13th day of September, A. D. 1902, pursuant to a real estate tax judgment entered in the Superior Court of the County of Yakima on the 2d day of September, A. D. 1902, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said Court, C. H. Wilfong duly purchased in compliance with the laws of the State of Washington, the following described real estate, to wit:

All of Block Three Hundred and Fiftythree (353) Capitol Addition to North Yakima, and that said C. H. Wilfong has complied with the laws of the State of Washington necessary to entitle him to a deed for said real estate.

Now, Therefore, know ye, that I, Wm. B. Dudley, County Treasurer of said Yakima County, State of Washington, in consideration of the premises and by virtue of the statutes of the State of Washington, in such cases provided, do hereby grant and convey unto C. H. Wilfong, heirs and assigns, forever the said real estate hereinbefore described.

365 Given under my hand and seal of office this 13th day of September, A. D. 1902.

[County Treasurer's Seal, Yakima County, Washington.]

WM. B. DUDLEY,
County Treasurer.

[Endorsements]: 14271. No. 57. Tax Deed from Wm. B. Dudley, County Treasurer Yakima County to C. H. Wilfong.

Filed for record at the request of C. H. Wilfong, September 18th, A. D. 1902, at 30 min. past 1 P. M., and recorded in 366 Volume 7 of Tax Deeds, page 24 Records of Yakima County, Washington.

E. E. KELSO,
County Auditor,
By — — —, Deputy.
Deputy,

.60 ¢ pd.

DEFENDANTS' EXHIBIT "2."

STATE OF WASHINGTON,
County of Yakima, ss:

This indenture made this 13th day of September, A. D. 1902, between Wm. B. Dudley, as Treasurer of Yakima County, State of Washington, party of the first part, and W. J. Reed, party of the second part:

Witnesseth, That, whereas, at a public sale of real estate held on the 13th day of September, A. D. 1902, pursuant to a real estate tax judgment entered in the Superior Court of the County of Yakima on the 2d day of September, A. D. 1902, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said Court, W. J. Reed duly purchased in compliance with the laws of the State of Washington, the following described real estate, to wit:

Lots Thirteen- (13) and Fourteen (14) in Block Thirty-two (32) North Yakima; Fractional Lot Sixteen (16) in Block One Hundred Fifty-one (151) Huson's Addition to North Yakima, and 367 all of Block Three Hundred Seventy-three (373) Capitol Addition to North Yakima according to the several plats thereof on file in the office of the County Auditor of the said Yakima County, and that said W. J. Reed has complied with the laws of the State of Washington necessary to entitle him to a deed for said real estate.

Now, Therefore, know ye, that I, Wm. B. Dudley, County Treasurer of said Yakima County, State of Washington, in consideration of the premises and by virtue of the statutes of the State of Washington, in such cases provided, do hereby grant and convey unto W. J. Reed, heirs and assigns, forever the said real estate hereinbefore described.

Given under my hand and seal of office this 13th day of September, A. D. 1902.

[County Treasurer's Seal, Yakima County, Washington.]

WM. B. DUDLEY,
County Treasurer.

STATE OF WASHINGTON,
County of — — —, ss:

In this — day of — — —, A. D. —, before me, the undersigned — — —, in and for the said County and State, personally appeared

—, to me personally known and known to me to be the Treasurer of — County, Washington, and the person described in and who executed the foregoing instrument, and he acknowledged to me that he signed and executed the same as Treasurer of said County, as his free and voluntary act and deed, for 368 the uses and purposes and in the capacity therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Filed for record at request of W. J. Reed on the 18th day of September, 1902, at 45 minutes past 2 o'clock P. M.

E. E. KELSO,

County Auditor,

By W. B. NEWCOMB, *Deputy.*

[Endorsements:] No. 45. Tax Deed from Wm. B. Dudley, County Treasurer, to W. J. Reed. Defendant's Exhibit "2." (Signed) Lillian Van Brundt, Special Examiner.

Office of the County Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor for the County of Yakima, State of Washington, do hereby certify that the within and foregoing instrument in writing is a full, true and correct copy of a Tax Deed filed for record in this Office on the 18th day of September, A. D. 1902, at 2:45 P. M., and recorded in Volume 7, page 25, records of Yakima County, as appears from the record of said instrument now in this office.

369 In witness whereof, I have hereunto set my hand and affixed my official seal this 1st day of March, A. D. 1907.

[Seal of County Auditor of Yakima County, State of Washington.]

(Signed)

WILBUR CROCKER,

County Auditor for the County of Yakima,

State of Washington,

By W. W. MILLER, *Deputy.*

[Endorsement:] Defendant's Exhibits "1" and "2." (Signed) Lillian Van Brundt, Special Examiner.

[Endorsements:] Testimony and Exhibits.

[*Special Examiner's Certificate to Testimony.*]

UNITED STATES OF AMERICA,

State of Washington, County of Yakima, ss:

I, the undersigned Special Examiner in said cause hereby certify that the within is the testimony in said cause taken *token* before me, and that I, on this September 14th, 1907, delivered said testimony with my own hand enclosed in this cover into the above-entitled court, and that I retained the same until so delivered, and that I sealed the said testimony up in the within cover and delivered it, as aforesaid, sealed and directed to said court.

(Signed)

MRS. LILLIAN VAN BRUNDT,
Special Examiner.

To the Clerk of the Above-entitled Court, North Yakima, Washington.

Filed in the U. S. Circuit Court for the Eastern District of Washington, September 14th, 1908, at five o'clock P. M. Frank C. Nash, Clerk. By Edward Clever, Deputy.

Opened this 25th day of September, 1907, at request of E. B. Preble, Solicitor for Complainants, in pursuance of stipulation duly filed and entered in this court. Frank C. Nash, Clerk. By Edward E. Cleaver, Deputy.

And afterward, to wit, on the 4th day of February, 1908, there was duly filed in said court and suit the Memorandum Decision on the Merits and Final Decree, in the words and figures following, to wit:

United States Circuit Court, Eastern District of Washington,
Southern Division.

No. —.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

371

Memorandum Decision on the Merits.

Filed —.

This is a suit in equity to determine adverse claims to real estate, founded upon provisions of the code of this State authorizing suits for such purposes.

The complainant derails title by valid mesne conveyance from a grantee by patent from the Government of the United States, all

of which conveyances were recorded in the real estate records of Yakima county in which the property is situated, prior to the initiation of the tax proceedings upon which the defendant's only claim of title is based. Since all the parties deraign title from a common *course*, the complainant must prevail, unless its title was divested by deeds to the defendants, executed pursuant to the proceedings for the foreclosure of tax liens referred to. McDonald vs. Hannah, 59 Fed. Rep. 977. The salutary rules which precludes a defendant claiming title to the property as successor in interest of the complainant, from contesting the complainant's title otherwise than by asserting his own claim relieves the Court from the necessity of considering the effect of transfers of certain lots from the complainand to persons not made parties to this suit.

The tax deeds mentioned purport to convey real estate pursuant to a decree of the Superior Court of the State of Washington for Yakima County, for-closing liens for delinquent taxes rendered by default on the 2d day of September, 1902, in a suit
 372 against numerous persons named as defendants and against many tracts and parcels of land, and city lots, listed and assessed for taxation as property of unknown owners. The complainant's name does not appear in the record and there was no service of process to bring any of the parties into court except by the publication of a summons which was not issued by the Court, but emanated from the county attorney. The defendants contended that an agent of the complainants did have actual notice of the proceedings, but this is not proved by a fair preponderance of the evidence. There was no complaint, petition or application to the Court filed until the day on which the decree was rendered. The Court did not take the property into its custody and no notice of any proceedings in rem was posted thereon. The law of the State authorizing for-closure of tax liens provides as follows:

"After the expiration of five years from the date of delinquency, when any property remains on the tax-rolls for which no certificate of delinquency has been issued, the County Treasurer shall proceed to issue certificates of delinquency on said property to the county, and shall file said certificates when complete with the clerk of the court and the treasurer shall thereon, with such legal assistance as the County Commissioners shall provide, * * * proceed to fore-close in the name of the County, the tax liens embraced in such certificates, and the same proceedings shall be had as when held by an individual. * * *"

373 There is no pretense that this initial step in lawful procedure was taken. Nothing purporting to be a certificate of delinquency has been filed in the Clerk's office. Throughout the record and in the deeds to the defendants, the property which they claim to have acquired is described as Blocks 353 and 373 of Capitol Addition to North Yakima, according to the recorded plat of said addition, but on the plat there is no block numbered 353 or 373. There is a tract centrally located on said plat, sufficient in area to make four blocks with streets corresponding in size and width to the other blocks and streets, if it were divided and if such

blocks had been platted and numbered consecutive numbers carrying out the system of the plat, two of them would have been numbered 353-373 respectively. The tract, however, is not so subdivided; there are no streets crossing it and within its lines there is the word "Reserved." The property which is the subject of controversy in this suit is within the boundaries of this reserved tract. As recorded in the foreclosure proceedings contains no specific reference to this reserved tract, and as the complainant is not mentioned, although holding by an undisputed title shown by the public records of the county, there can be no reasonable theory to support a claim that this property was in any way identified with the foreclosure proceedings.

The complainant disputes the validity of the foreclosure proceedings and the defendants' deeds on other grounds, but the foregoing is a sufficient statement upon which to base this decision.

374 A Court of Equity will not aid an owner of property in any attempt to evade payment of taxes, but this Court is not called upon to do any such thing in this case, as the complainant in its bill of complaint offers to comply with any terms which the Court may impose and to pay whatever sum the Court shall require to be paid on account of taxes. In view of this offer the Court will not refuse to exert its power to prevent an unwarranted confiscation. The law makes ample provision concerning unwilling and negligent tax debtors. Contributors to the public revenue for support of the Government are entitled to protection of their legal rights. Public officers should be sustained in proceedings for the collection of taxes in the manner prescribed by law, but unlawful and surreptitious attempts to confiscate property are detrimental to the public welfare, and when appealed to, the Courts are bound to exert their authority to prevent such a despoiling of individual rights, by public officials. When the officers charged with the duty of enforcing the revenue laws have flagrantly neglected to observe the essential requirements of lawful procedure, it is enough to exact full payment of the amount justly due as a condition precedent to the granting of relief, so that the Government shall receive from property owners what is justly due and no more.

In behalf of the defendants, it is contended that this suit is a collateral attack upon a decree rendered by a court competent to decide every question as to its own jurisdiction in the premises, and which affirmed its jurisdiction by its decree. It is not true,

375 however, that a court which has not jurisdiction of a particular case, conferred by law, can invest itself with jurisdiction by its own initiative. *Thomson v. Whitman*, 18 Wall. 457. The jurisprudence of this country does not admit of despotic power in any court, to confiscate property by its decree without lawful notice to the owner and a reasonable opportunity to defend his rights. *Windsor v. McVeigh*, 93 U. S. 274. These principles are fundamental, and unchangeable so long as the Courts shall be steadfast in the enforcement of the provisions of our national constitution.

On the following grounds I hold that the tax deeds under which

the defendants claim the property in controversy are absolutely void, viz.:

First. Until property shall have been listed as delinquent for nonpayment of taxes, by a description thereof, sufficiently accurate to identify it, so that an intelligent owner acquainted with his property, upon having the delinquent list brought to his attention will be able to recognize the description as being applicable to his property, it does not become delinquent for nonpayment of taxes, nor subject to for-closure or sale. This property was not so listed.

Second. The filing of a certificate of delinquency is the initial step in lawful proceedings to for-close a tax lien by a judicial decree. In the proceedings referred to, no such certificate was filed.

Third. The filing of an application to the Court to for-close a tax lien is the second step necessary to the exercise of judicial power in such a case, and a fair opportunity to present a legal
376 defense is also essential; therefore a final decree could not be lawfully rendered on the same day as the day on which the application was filed, as was done in this case.

Fourth. Jurisdiction to proceed in rem against property can only be acquired by an actual seizure of it, or by some equivalent act as by a notice to appraise the owner of the proceeding, served or posted, or published according to a mode prescribed by law, or waived. In a suit in rem jurisdiction of the res is obtained by a seizure under process of the Court, whereby it is held to abide such order as the Court may make concerning it. Seizure of the property or the levy of a writ upon it, is the one essential requisite to jurisdiction. *Cooper v. Reynolds*, 10 Wall. 308. The Superior Court did not acquire jurisdiction by either mode. There was no seizure of the property, no writ against it was issued, no notice was served upon the owner, and the published summons contained no information that the proceeding affected this owner or its property.

Fifth. The tax deeds under which the defendants claim to have acquired this property are void because the description of the property which they purport to convey is not applicable to any property.

As the nearest approximation to an equitable determination of the rights of the parties, it will be assumed that the defendants have succeeded to the rights of Yakima County to collect the taxes chargeable to this property, and the complainant will be required to pay
377 to each of them \$76.75 and interest, or deposit the same in the Registry of this Court, and upon that condition the *felief* prayer for will be decreed.

C. H. HANFORD, *Judge*.

Filed Feby. 4th, 1908. Frank C. Nash, Clerk. By Edw. E. Cleaver, Deputy.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

In Equity.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Final Decree.

This cause duly came on to be heard upon the pleadings and evidence adduced and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed, as follows, to wit:

I.

That the complainant, Ontario Land Company, is the owner in fee of the lands and premises described in the Bill of Complaint and hereinafter more particularly described, free and clear of any claims on the part of the defendants, Charles H. Wilfong, 378 and May A. Wilfong, his wife, and Walter J. Reed, or either of them.

II.

That the tax deeds upon which the defendants claim title adversely to said Ontario Land Company, to wit: That certain tax deed bearing date the 13th day of September, 1902, made by the County Treasurer of Yakima County, to the defendant, Charles H. Wilfong, purporting to convey to said defendant Block Three Hundred Fifty-three (353) in Capitol Addition to North Yakima, and which said tax deed was recorded in Book "7" of Deeds on page 24 in the office of County Auditor of said Yakima County in the State of Washington, and the tax deed bearing date the 13th day of September, 1802, made by the County Treasurer of said Yakima County to the defendant, Walter J. Reed, purporting to convey to said defendant Block Three Hundred Seventy-three in Capitol Addition to North Yakima, and which said tax deed was recorded in the office of the County Auditor of said Yakima County, in Book "7" of Deeds, on page 25, are, and each of them, at all times, have been, null and void and of no force and effect.

III.

It is further decreed that the defendants, Charles H. Wilfong and May A. Wilfong, his wife, became and were subrogated to Yakima County, State of Washington, in respect of payment of the amount in which Block Four of Heerman's Addition to North Yakima mentioned in the Bill of Complaint herein was justly taxable for 379 years prior to and inclusive of the entry of the alleged judgment referred to in the Answer herein, to wit: In the

sum of \$76.75, with interest thereon at the rate of six per cent. per annum from the date of entry of the said alleged judgment, viz., from the 2d day of Sept., 1902, with interest, aforesaid, and the said sum having been paid into the Registry of this Court by complainants for the said Charles H. Wilfong and May A. Wilfong, it is now decreed that the said claim of the said Charles H. Wilfong and May A. Wilfong be and hereby is discharged and satisfied; and it is further decreed that the said Walter J. Reed became and was subrogated to Yakima County, State of Washington, in respect of the payment of the amount in which Block Three of Heerman's Addition to North Yakima, Washington, mentioned in the Bill of Complaint was justly taxable for years prior to and inclusive of the entry of the said alleged tax judgment, viz., \$76.75, with interest thereon from the date of entry of said judgment, to wit, from the 2d day of September, 1902, and the said sum with interest, as aforesaid, having been paid into the Registry of this Court by complainants for the said Walter J. Reed, it is now decreed that the said claim of Walter J. Reed, on account of said sum, be and hereby is discharged and satisfied.

IV.

It is further adjudged and decreed that the alleged claims of the defendants above-named, and each of them, to the lands described in the Bill of Complaint, herein, or any part thereof, are
380 wholly null and void, and that said defendants, Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, have not, nor has either of them, any right, title interest, estate or lien in the said property, or any part thereof, under and by virtue of the tax deeds, aforesaid, or either of them, and that said defendants and each of them, are hereby forever barred and enjoined from asserting or claiming any estate or interest therein, or any right, title or lien thereto, and that the cloud arising from the pretended claim of the defendants by virtue of said tax deeds, or either of them, on the title of said complainant; Ontario Land Company, be, and the same is hereby removed and canceled.

V.

That the lands hereinbefore referred to as owned by the complainant, Ontario Land Company, as aforesaid, are described as follows, to wit: All those tracts or parcels of land lying and being in the county of Yakima in the State of Washington, described as follows: All of Blocks Three (3) and Four (4) in Heerman's Addition to North Yakima, according to the official plat thereof on file and of record in the office of the County Auditor of said county, excepting only Lots One (1), Two (2) and Three (3) in Block Three (3) and Lots (3), Five (5), Seven (7) and Eight (8) in Block Four (4) of said Addition, and that as to the lands last above described, and as to the whole of Blocks Three (3) and Four (4) in said Heerman's Addition, it is adjudged that, said defendants, and each

381 of them, have no right, title, interest or estate or lien upon the same or any part thereof, and that said defendants, and each of them, are hereby forever barred from asserting or claiming any estate or interest in and to any part of said Blocks Three (3) and Four (4) in said Heerman's Addition.

It is further ordered, adjudged and decreed that said Complainant, Ontario Land Company, have and recovered from said defendants, and each of them, their costs of suit incurred herein in the sum that same shall be taxed, to wit: in the sum of \$223.88.

Dated December —, 1907.

C. H. HANFORD, *Judge*.

At the time of rendering the foregoing decree and the findings of fact and conclusions of law in the above-entitled cause, defendant's solicitor excepted to the said decree, findings and conclusions, and each and every part thereof, and his exceptions were duly allowed by the court.

C. H. HANFORD, *Judge*.

Filed for record Feby. 4th, 1908. Frank C. Nash, Clerk. By Edw. E. Cleaver, Deputy.

382 And afterward, to wit, on the 10th day of July, 1908, there was duly filed in said court and cause, Complainant's Assignment of Errors and Præcipe for Transcript of the record, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 20.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Assignment of Errors.

Come now the defendants and each of them, and make the following Assignment of Errors, which they and each of them aver occurred in the trial of this cause in Circuit Court, and pray for reversal of the Decree of the Circuit Court and for judgment as prayed for in their Answer.

I.

The Circuit Court erred in holding that the description of the property, as the same appeared on the tax-rolls of Yakima County and as the same was assessed, charged and levied, was an insufficient description for the purpose of charging said property with the tax.

II.

The Circuit Court erred in holding that the tax foreclosure proceeding in the Superior Court of the State of Washington in and for Yakima County, wherein and whereby the tax levied and charged against the property described in the Bill of Complaint for the years 1892 and 1893 was void on account:

- (a) Failure to file with said Court a Certificate of Delinquency.
- (b) Failure to properly summon the owner of said property.
- (c) Failure to give the owner of said property legal notice of the pendency and prosecution of said cause in the Superior Court of the State of Washington; and
- (d) On account of irregularities appearing in the progress of said tax foreclosure proceeding.

III.

The Circuit Court erred in holding that the tax deed issued to the defendants by the Treasurer of Yakima County, in pursuance of the order of the Superior Court of the State of Washington in the said tax foreclosure proceeding was and is void on account of insufficiency of the description of the property, and on account of irregularities occurring in the said tax foreclosure proceeding, and for other reasons appearing in the Opinion of the Court and the judgment from which this Appeal is taken.

IV.

384 The Circuit Court erred in holding that the Judgment of the Superior Court of the State of Washington, in and by virtue of which the tax liens on the property described in the bill were foreclosed, could be attacked in this collateral proceeding.

V.

The Circuit Court erred in holding that it had the power and jurisdiction to examine into and determine the regularity of the said tax foreclosure proceeding in the Superior Court of the State of Washington, without the previous payment into Court of the tax charged against the property described in the Bill of Complaint on which said tax foreclosure was based.

VI.

The Circuit Court erred in rendering a Judgment and Decree canceling and annulling the deed issued by the Treasurer of Yakima County, Washington, under which the defendants claim title.

VII.

The Circuit Court erred in refusing to enter a Judgment and Decree sustaining and upholding the title of defendants in and to the property described in the Bill of Complaint, and in refusing to hold that the defendants were at the commencement of this suit and at the

time of entry of said Decree the legal owners in fee simple of the absolute title to the property described in the Bill of Complaint.

Wherefore, the defendants pray that the findings, and Decree of the Circuit Court may be reversed, and that a Decree may be entered in favor of the defendants in full accord with their Answer.

(Signed)

IRA P. ENGLEHART,

Solicitor for Defendant Walter J. Reed.

(Signed)

B. S. GROSSCUP,

Solicitor for Defendants Charles H.

Wilfong and May A. Wilfong.

[Endorsed:] Assignment of Errors. Filed July 10th. 1908. Frank C. Nash, Clerk. By Edward E. Cleaver, Deputy.

Copy.

The Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Defendants.

Præcipe [for Transcript of Record].

Clerk of the Circuit Court:

Please prepare a transcript of the entire record in the above-entitled cause, embracing all of the Pleadings and Stipulation on which testimony was taken, the testimony, the Opinion of the Court and Final Decree. Each of these documents should show the date of filing, and the whole should be accompanied with your certificate in proper form, according to the rules in equity.

(Signed)

B. S. GROSSCUP,

(Signed)

ENGLEHART & RIGG,

Solicitors for Defendants.

[Endorsed:] Præcipe for Transcript of Record. Filed July 10th. 1908. Frank C. Nash, Clerk. By Edward E. Cleaver, Deputy.

And afterward, to wit, on the 16th day of July, 1908, there was duly filed in said court in said case defendant's Petition for Appeal and Order Allowing Appeal, Citation on Appeal and Appeal Bond, in the words and figures following, to wit:

Citation on Appeal [Original].

The President of the United States to the Ontario Land Company,
a Minnesota Corporation, Greeting:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States in and for the Ninth Circuit, to be holden at San Francisco, California, within thirty days from the date of the signing of this Citation, pursuant to an Appeal filed in the office of the Clerk of the Circuit Court of the United States for the Eastern District of Washington, Southern Division, holding terms at North Yakima, Washington, wherein Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, are plaintiffs and Ontario Land Company is defendant, to show cause, if any there be, why the Judgment in said writ mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

In witness whereof, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of July, 1908.

C. H. HANFORD,

United States District Judge, Presiding in the Circuit Court.

Attest:

[SEAL.]

FRANK C. NASH, *Clerk*,

By EDWD. E. CLEAVER, *Deputy*.

[Endorsed:] Original. No. 20. In the Circuit Court of Appeals of the United States in and for the Ninth Circuit. Charles H. Wilfong et al. vs. Ontario Land Company. Citation on Appeal. Filed July 16th, 1908. Frank C. Nash, Clerk. By Edwd. E. Cleaver, Deputy. Englehart & Rigg, B. S. Grosscup, for Appellants. Entered in General Order Book, Vol. 1, page 69.

Original.

The Circuit Court of Appeals of the United States in and for the Ninth Circuit.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,

vs.

ONTARIO LAND COMPANY, Respondent.

388 *Affidavit of Service [of Citation on Appeal].*

STATE OF WASHINGTON,
County of Yakima, ss:

Joseph Metzger, being first duly sworn, on oath deposes and says: That he is a citizen of the United States and State of Wash-

ington; that he is not a party to the above-entitled action and is competent to be a witness in said action; that he is over the age of twenty-one years and was over the age of twenty-one on the 17th day of July, 1908; that on the said 17th day of July, 1908, he served the Citation on Appeal hereto attached on the Ontario Land Company in the County of Yakima, State of Washington, by delivering to and leaving with Albert S. Congdon in the County of Yakima, State of Washington, the statutory agent of said Ontario Land Company for the State of Washington, a true and correct copy of said Citation on Appeal, said Albert S. Congdon being a resident of said Yakima County, State of Washington.

JOSEPH METZGER.

Subscribed and sworn to before me this 17th day of July, 1908.

[SEAL.]

ROBERT B. HAWKS,

*Notary Public in and for the State of Washington,
Residing at North Yakima.*

[Endorsed:] Filed in the U. S. Circuit Court, Eastern Dist. of Washington. Jul. 20, 1908. Frank C. Nash, Clerk. Edwd. E. Cleaver, Dep. Entered in General Order Book, Vol. 1, page 70.

389

Copy.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No.. 20.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Defendants.

Petition for Appeal to the Circuit Court of Appeals.

Now come the above-named defendants, Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, and each of them, conceiving themselves aggrieved by the Decree made and entered by the Circuit Court on the 4th day of February, 1908, in the above-entitled cause, do hereby appeal from said Order and Decree to the Circuit Court of Appeals of the United States for the Ninth Circuit, for the reason specified in the assignment of errors, which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said Order and Decree is made, duly authenticated, may be sent to
the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

390 Dated, this 13th day of July, 1908.

(Signed)

IRA P. ENGLEHART,

(Signed)

B. S. GROSSCUP,

Solicitors for Defendants.

The foregoing petition for appeal is granted and claim of appeal therein made is allowed, and the same shall act as a Supersedeas upon the appellants giving bond in the sum of \$2,000.

This 13th day of July, 1908.

(Signed)

C. H. HANDFORD, *Judge*.

[Endorsed:] Petition for Appeal and Order Allowing Appeal. Filed July 16th, 1908. Frank C. Nash, Clerk. By Edward E. Cleaver, Deputy.

The Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Defendants.

STATE OF WASHINGTON,

County of Yakima, ss:

Joseph Metzger, being first duly sworn, on oath deposes and says: That he is a citizen of the United States and State of Washington; that he is not a party to the above-entitled action and is competent to be a witness in said action; that he is over the age of twenty-one years and was over the age of twenty-one on the 17th day of July, 1908; that on the said 17th day of July, 1908, he served the Petition for Appeal to the Circuit Court of Appeals hereto attached on the Ontario Land Company in the County of Yakima, State of Washington, by delivering to and leaving with Albert S. Congdon, in the County of Yakima, State of Washington, the statutory agent of said Ontario Land Company for the State of Washington, a true and correct copy of said Petition for Appeal to the Circuit Court of Appeals, said Albert S. Congdon being a resident of said Yakima County, State of Washington.

JOSEPH METZGER.

Subscribed and sworn to before me this 17th day of July, 1908.

[SEAL.]

ROBERT B. HAWKS,

Notary Public in and for the State of Washington, Residing at North Yakima.

[Endorsed:] Filed in the U. S. Circuit Court, Eastern Dist. of Washington, Jul. 20, 1908. Frank C. Nash, Clerk. Edw'd E. Cleaver, Dep. Entered in General Order Book, Vol. 1, page 71.

Citation on Appeal (Copy).

The President of the United States to the Ontario Land Company,
a Minnesota Corporation, Greeting:

You are hereby cited and admonished to be and appear at the
Circuit Court of Appeals of the United States in and for the
392 Ninth Circuit, to be holden at San Francisco, California,
within thirty days from the date of the signing of this Citation, pursuant to an appeal filed in the office of the Clerk of the Circuit Court of the United States for the Eastern District of Washington, Southern Division, holding terms at North Yakima, Washington, wherein Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed are plaintiffs and Ontario Land Company is defendant, to show cause, if any there be, why the Judgment in said writ mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

In witness whereof, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of July, 1908.

(Signed)

C. H. HANFORD,

*United States District Judge, Presiding in the
Circuit Court.*

Attest:

FRANK C. NASH, *Clerk,*

By EDWARD C. CLEVER, *Deputy.*

[Endorsed:] Citation on Appeal. Filed July 16th, 1908. Frank C. Nash, Clerk. By Edward E. Clever, Deputy.

393 The United States Circuit — of Appeals, Ninth Circuit.

No. 20.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Appellants,

vs.

ONTARIO LAND COMPANY, Defendant.

Appeal Bond.

Know all men by these presents, that we, Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, of the county of Yakima and State of Washington, as principals, and The United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the above-named Ontario Land Company in the sum of Two Thousand (\$2,000) Dollars, to be paid to said Ontario Land Company, for the payment of which, well and truly to be made, we bind ourselves and each of us and our and each of our

heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of July, A. D. 1908.

Whereas, the above-named Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed have prosecuted an appeal to the Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered by the Judge of the Circuit Court of the United States for the Eastern District of Washington and in that certain
 394 cause pending in said Court wherein Ontario Land Company is plaintiff and Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed are defendants:

Now, therefore, the condition of this obligation is such that, if the above-named Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, appellants, shall prosecute said Appeal to effect and answer all damages and costs if they fail to make said Appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

(Signed)

C. H. WILFONG.

(Signed)

CHAS. H. WILFONG.

(Signed)

MAY A. WILFONG.

By C. H. WILFONG.

(Signed)

WALTER J. REED.

By IRA P. ENGLEHART.

(Signed)

THE UNITED STATES FIDELITY AND GUAR-
 ANTY COMPANY,

A Corporation,

By HENRY B. SCUDDER AND
 IRA P. ENGLEHART,

Its Attorneys in Fact,

Residing at North Yakima, Washington.

[Seal of Corporation Surety Company.]

The foregoing bond was presented to me this 13th day of July, 1908, and was this day by me approved as to form, amount and sufficiency of security.

(Signed)

C. H. HANFORD, *Judge.*

395 [Endorsed:] Appeal Bond. Filed July 16th, 1908. Frank C. Nash, Clerk. By Edward E. Cleaver, Deputy.

The United States Circuit Court of Appeals, Ninth Circuit.

No. 20.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,
vs.

ONTARIO LAND COMPANY, Respondent.

Affidavit of Service [of Appeal Bond].

STATE OF WASHINGTON,
County of Yakima, ss:

Joseph Metzger, being first duly sworn, on oath deposes and says:
That he is a citizen of the United States and State of Washington;
that he is not a party to the above-entitled action and is competent
to be a witness in said action; that he is over the age of twenty-one
years and was over the age of twenty-one on the 17th day of July,
1908; that on the said 17th day of July, 1908, he served the Appeal
Bond hereto attached on the Ontario Land Company in the County
of Yakima, State of Washington, by delivering to and leaving with
Albert S. Congdon in the County of Yakima, State of Washington,
the statutory agent of said Ontario Land Company for the State
of Washington, a true and correct copy of said appeal bond,
396 said Albert S. Congdon being a resident of said Yakima
County, State of Washington.

(Signed)

JOSEPH METZGER.

Subscribed and sworn to before me this 17th day of July, 1908.

[NOTARY SEAL.] (Signed) ROBERT P. HAWKS,
Notary Public in and for the State of Washington,
Residing at North Yakima.

[Endorsed:] Affidavit of Service. Filed July 20th, 1908. Frank
C. Nash, Clerk. By Edward C. Cleaver, Deputy.

And afterward, to wit, on the 8th day of August, 1908, there was
duly filed in said court an order to transmit as a part of the transcript
original exhibits "A," "5" and "6," in the words and figures fol-
lowing, to wit:

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

Order to Transmit Original Exhibits.

Upon representation of counsel, that original exhibit "5," being a Plat of Capitol Addition to North Yakima, original exhibit "A," being a Plat of Capitol Addition to North Yakima, which is attached to Complainant's Bill of Complaint, and original exhibit "6," being a Plat of Heerman's Addition to North Yakima, are necessary for the proper consideration of this cause in the Circuit Court of Appeals, and this Court being of that opinion.

It is ordered, that the Clerk transmit as a part of the transcript of this cause, said original exhibits.

(Signed)

C. H. HANFORD, *Judge.*

[Endorsed:] Order to Transmit Original Exhibits. Filed in the U. S. Circuit Court for the Eastern District of Washington. August 7th, 1908. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 20.

ONTARIO LAND COMPANY, Complainant,

vs.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Defendants.

398 *Clerk's Certificate to Transcript of Record.*

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I, Frank C. Nash, Clerk of the Circuit Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages, numbered from 1 to 297, inclusive, constitute and are a complete, true and correct copy of the entire record, papers and all proceedings had in said action, as the same remain on file and of record in said Circuit Court, except complainant's original Exhibits "A," "5" and "6," which original exhibits I herewith transmit with this record pursuant to order of Court

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duly filed and entered on the 7th day of August, 1908, and that the same, which I transmit, constitute my return to the annexed order of appeal, lodged and filed in my office on the 16th day of July, A. D. 1908.

I also annex and transmit the original citation in said action.

I further certify that the cost of preparing and certifying said record amounts to the sum of \$333.70, and that the same has been paid in full by the Solicitors for the defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at the City of Spokane, in said Eastern District of Washington, in the Ninth Circuit, the 7th day of August, A. D. 1908, and the Independence of the United States of America, the one hundred and thirty-third.

[SEAL.]

FRANK C. NASH,

*Clerk U. S. Circuit Court for the Eastern
District of Washington.*

[Endorsed:] No. 1630. United States Circuit Court of Appeals for the Ninth Circuit. Charles H. Wilfong and May A. Wilfong, His Wife, and Walter J. Reed, Appellants, vs. The Ontario Land Company (a Corporation), Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Eastern District of Washington, Southern Division.

Filed August 11, 1908.

F. D. MONCKTON, *Clerk.*

(Here follows diagram marked pages 400, 401, and 402.)

403 Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,

County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington not appertaining to a court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a plat of Capitol Addition to North Yakima, Washington, filed for record in this office on the 27th day of May, A. D. 1889, and recorded in Volume "A" of Plats, page 29, of the Records of Plats of said Yakima County as appears from the records of said instrument now in this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 28th day of June, A. D. 1907.

[SEAL.]

WILBUR CROCKER,

*County Auditor for the County of Yakima,
State of Washington.*

STATE OF WASHINGTON,

County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That
404 I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding justice of said court; that said court is a court of record; that Wilbur Crocker is and at the time of making — foregoing certificate was county auditor for said Yakima county, in the State of Washington; that the within and foregoing attestation — in the name of said Wilbur Crocker and bearing the seal of said county auditor and bearing date June 28th, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the courts of said State.

Witness my hand at North Yakima, Washington, this 3d day of July, A. D. 1907.

H. B. RIGG,

Judge of the Superior Court of the State of Washington in and for the County of Yakima, in said State.

STATE OF WASHINGTON,

County of Yakima:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is and for more than two years last past continuously has been the duly elected, qualified, commissioned and acting Judge of the said Superior Court of the State of Washington, in and for said Yakima

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FOR

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County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing certificate is the genuine signature of said judge.

405 Witness my hand and the seal of said Court at North Yakima, Washington, this 17th day of July, A. D. 1907.

[SEAL.]

R. K. NICHOLS,

*County Clerk of Yakima County, State of Washington,
and ex-Officio Clerk of said Superior Court.*

(Here follows diagram marked pages 406, 407, and 408.)

409 Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, Wilbur Crocker, County Auditor of the County of Yakima, State of Washington, do hereby certify: That I am the legal custodian and keeper of the records and office books kept in the office of the County Auditor for the said County of Yakima, a public office of said State of Washington not appertaining to a court.

I do further certify that the within and foregoing instrument in writing is a full, true and correct copy of a plat of Heerman's Addition to North Yakima, Washington, filed for record in this office on the 7th day of Dec. A. D. 1904, and recorded in Volume "A." of Plats —, page 116, of the Records of Plats of said Yakima County, as appears from the record of said instrument now in this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 28th day of June, A. D. 1907.

[SEAL.]

WILBUR CROCKER,
County Auditor of the County of
Yakima, State of Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

I, H. B. Rigg, Judge of the Superior Court of the State of Washington, in and for Yakima County, do hereby certify: That
410 I am the Judge of the Superior Court of the State of Washington in and for Yakima County, and the presiding justice of said court; that said court is a court of record; that Wilbur Crocker is and at the time of making foregoing certificate was County Auditor for said Yakima County, in the State of Washington; that the within and foregoing attestation — in the name of said Wilbur Crocker and bearing the seal of said County Auditor and bearing date June 28th, 1907, is in due form and by the proper officer, and is by the laws of the State of Washington, admissible as evidence in the courts said State.

Witness my hand at North Yakima, Washington this 3d day of July, A. D. 1907.

H. B. RIGG,
Judge of the Superior Court of the State of Washington
in and for the County of Yakima, in said State.

STATE OF WASHINGTON,
County of Yakima:

I, R. K. Nichols, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify: That the Honorable H. B. Rigg is and for more than two years last past continuously has been the duly elected, qualified, commissioned and acting Judge of said

Superior Court of the State of Washington, in and for said Yakima County, and the presiding Justice thereof, and that I know his signature, and that the signature to the foregoing Certificate is the genuine signature of said Judge.

411 Witness my hand and the seal of said Court, at North Yakima, Washington, this 17th day of July, A. D. 1907.

[SEAL.]

R. K. NICHOLS,

*County Clerk of Yakima County, State of Wash-
ton, and ex-Officio Clerk of said Superior Court.*

412 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,

vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

*Certificate of Clerk U. S. Circuit Court of Appeals to Printed Trans-
cript of Record.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing four hundred and eleven (411) pages, numbered from and including one (1) to and including four hundred and eleven (411), to be a true copy of the Printed Transcript of Record upon Appeal from the United States Circuit Court for the Eastern District of Washington, Southern Division in the above-entitled case as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit, and as the said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this first day of November, A. D., 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit].

F. D. MONCKTON, *Clerk.*

413 United States Circuit Court of Appeals for the Ninth Circuit
No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,
vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

*Proceedings Had in the United States Circuit Court of Appeals for
the Ninth Circuit.*

(Addenda.)

414 At a stated term, to wit: the October term, A. D. 1908, of
the United States Circuit Court of Appeals for the Ninth
Circuit, held at the Court Room, in the City and County of San
Francisco, on Monday the twelfth day of October in the year of our
Lord one thousand, nine hundred and eight.

Present:

The Honorable William B. Gilbert, Circuit Judge.
Honorable Erskine M. Ross, Circuit Judge.
Honorable William W. Morrow, Circuit Judge.

No. 1630.

CHARLES H. WILFONG et ux. et al., Appellants,
vs.

THE ONTARIO LAND COMPANY, a Corporation, Appellee.

Order of Submission.

Ordered, appeal in the above-entitled cause argued by Mr. B. S. Grosscup, counsel for the appellants, and Mr. A. L. Agatin, counsel for the appellee, and submitted to the Court for consideration and decision.

415 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,
vs.
ONTARIO LAND COMPANY, Appellee.

Opinion U. S. Circuit Court of Appeals.

Benjamin S. Grosseup and Ira P. Englehart for the Appellants.
A. L. Agatin for the Appellee.

Before Gilbert, Ross and Morrow, Circuit Judges.

GILBERT, Circuit Judge, delivered the opinion of the court.

The appellant brought a suit to determine adverse claims to certain real property in Capitol Addition to North Yakima, Washington, under provisions of the Code of that state. The adverse claims were asserted under tax titles acquired by the appellants by virtue of a decree of the Superior Court of the State of Washington for Yakima County, foreclosing liens for delinquent taxes in a suit brought by the county against numerous defendants
416 and against many tracts and parcels of land. The decree was rendered by default on September 2, 1902. Service upon the defendants was had by publication only, and there was no personal notice to or appearance by the appellee. The court below, held the tax titles void, first, for the defective description of the lands in the tax proceedings, and in the tax deeds, and second, independently of those defects, for want of jurisdiction in the Superior Court in that, first, no certificate of delinquency was ever filed with the clerk of that court, and second, no complaint, petition, or application on which such foreclosure proceeding was had was filed in that court until the day on which the decree was rendered. As to the defect in the descriptions of the property, the Supreme Court of the State of Washington, in *Ontario Land Co. v. Yordy*, 44 Wash. 239, in a suit which had been brought to determine the validity of tax titles acquired to certain other property sold under the same decree of foreclosure for delinquent taxes, in which there was the same defect in description, held the descriptions good and sustained the tax titles. On writ of error to the Supreme Court of the United States to review that decision, the judgment was affirmed and it was held that the tax titles were not void for any defect in the descriptions. *Ontario Land Co. v. Yordy*, 29 Sup. Court Rep. 278. That decision eliminates the question of defective descriptions from the case which is now before us, and it only remains to inquire whether the
417 tax titles should be held void on account of defects and irregularities in the proceedings of foreclosure. The question of the effect of those irregularities in the proceedings was

presented to the Supreme Court of Washington in the Yordy case, but the court declined to pass upon them on the ground that the plaintiff in that suit had not tendered the delinquent taxes as required by Ballinger's Code, Section 5678, and the question is now presented in this case whether we are not precluded from any consideration of them for the reason that the appellee in its bill made no allegation that it had made the tender which is required by that section of the Code. By section 5678, Bal. Code, it is provided that no action shall be instituted for the recovery of property sold for taxes unless the person desiring to commence such action shall first pay or tender to the officer entitled to receive the same, all taxes, penalties, interests and costs due and unpaid from such person on the property sought to be recovered. Section 5679 provides that in a suit against a person in possession thereof, the plaintiff shall allege in his complaint that "all taxes, penalties, interests and costs paid by the purchaser at the tax sale, his assignees or grantees, have been fully paid or tendered, and the payment refused." Section 5680 provides that the two foregoing sections shall be construed as imposing additional conditions upon the complainant in actions for the recovery of property sold for taxes. The Supreme Court of Washington has held in cases where objection to the complaint for want of allegation of such tender was raised in the court below, that the statute makes the allegation indispensable to the right
418 of recovery. *Merritt v. Corey*, 22 Wash. 444; *Denman v. Steinbach*, 29 Wash. 179; *Rowland v. Eskeland*, 40 Wash. 253; *Ontario Land Co. v. Yordy*, 44 Wash. 239. That statute, so construed by the courts of the state is, we think, controlling upon a Federal Court in that state in a similar proceeding. In *Rice v. Jerome*, 97 Fed. 719, the Circuit Court of Appeals for the Eighth Circuit held that the Circuit Court of the United States for the District of Colorado, could not disregard the law of that state, which provided that before lands sold at a tax sale for taxes legally assessed and due, can be recovered from the holder of the tax title, the owner must pay the latter the amount for which the lands were sold at the tax sale, together with the interest and penalties provided by the law, that the decisions of the Supreme Court of a state construing and expounding its revenue laws are binding upon the Federal Courts in that state, and that in such courts, such payment or tender is an indispensable condition to the right of the owner to maintain a bill in equity to cancel the tax sale certificates or remove the cloud cast by them upon his title. In *Mendenhall v. Hall*, 134 U. S. 559, in view of the law of Louisiana, which provided that no sale of property for taxes shall be annul-ed for any informality in the proceedings until the price paid with 10 per cent interest be tendered to the purchaser, the court said that if the complainant "had attempted to have the tax sale set aside for mere informality, it would have been a good plea in bar to any suit by
419 him against the purchaser that he had not tendered the amount paid by him with interest thereon." The appellee in its bill in the present case made no averment of actual tender, but it expressed an unconditional offer to abide by the

decree of the court and to pay such sum as the court should adjudge due to the appellant as a condition to the relief sought. But the objection that the bill was defective in that respect comes too late. There was no demurrer to the bill and no plea by the defendants in the suit of want of tender, and no suggestion of such a defense appears in the pleadings or record in the case. It is a general rule that the failure to comply with a condition precedent to the right to sue must be raised in the trial court so that opportunity may be afforded to amend, and the objection cannot be raised for the first time on appeal. 2 Cyc. 667 and cases there cited; *Lombard v. McMillan*, 95 Wis. 627; *Adams v. Burdick et al.*, 68 Iowa 668; *Smith v. Bush*, 58 Ga. 121; *Pennypacker v. Umberger*, 22 Pa. St. 492.

The revenue and taxation laws of Washington (Ballinger's Code, Sec. 1749 et seq.) as amended by the laws of 1901, p. 383 provide that after taxes on real property are delinquent, the County Treasurer may make out and issue certificates of delinquency which shall specify, among other things, the amount of taxes and interest due, and that such certificates may be sold to any person applying therefor upon the payment of their value in principal and interest, and that three years after the date of delinquency, the holder of such certificate may give notice to the owner of the property described therein that he will apply to the Superior Court of the county in which the property is situate for a judgment foreclosing the

420 tax lien against the property, and they prescribe what the notice shall contain, and provide that it shall be served in the same manner as summons in civil actions. They provide further that, after the expiration of five years from the date of delinquency of taxes on property remaining on the tax rolls for which no other certificate of delinquency has been issued, the County Treasurer shall issue certificates of delinquency to the county, and shall file the same when completed, with the clerk of the court, and shall thereupon proceed to foreclose in the name of the county and follow the proceeding provided for in the case of foreclosure by an individual, with the exception that summons may be served exclusively by publication. In the present case the certificate of delinquency was never filed with the clerk of the Superior Court. The summons which was published gave notice that the county was the holder of the certificate of delinquency and that the same was issued on January 31, 1898, and that the county would apply to the Superior Court of Yakima County for judgment foreclosing the lien thereof, and the judgment of foreclosure recites that the county is the owner and holder of the certificate of delinquency issued on January 31, 1898. On the day on which the decree of foreclosure was rendered, the county filed its written application for judgment, in which application were set forth the tax proceedings, the description of the property assessed, and a prayer that the county's lien against the property be foreclosed and that judgment be given against each piece, parcel or tract of land described therein. It is contended that the application should have been filed at the beginning of

421 the proceeding and before the issuance of the summons. We find no ground for so holding. The law does not provide for

the filing of such an application. All that is required by the statute in that regard is that the summons shall notify the delinquent tax payer that the holder of the certificate will apply for judgment of foreclosure. That notice was given in this case, and the county did, in pursuance thereof, file an application for judgment which contained all the essentials of a complaint, and thereby it fully complied with the statutory requirement.

But there is in the statute an express provision that the County Treasurer shall file the certificates of delinquency with the clerk of the court, and that the treasurer shall thereupon proceed to foreclose. Does the omission to file that certificate render the foreclosure decree void? The answer depends on whether the provision is mandatory or directory. The Supreme Court of Washington has held that it is the latter. In *Washington Timber etc. Co. vs. Smith*, 34 Wash. 625, it was held that where in a tax foreclosure the court had jurisdiction, and by a nunc pro tunc order made after the judgment of foreclosure the filing mark on the certificates which were not filed until fifteen days after the first publication of the summons was altered, so as to ante-date the first publication, the objection that they were not in fact filed in time relates to a mere irregularity which should have been raised in the foreclosure case, and that since the summons and its publication complied with the law, the property owner was within the jurisdiction of the court, and was required to take notice of the action, and not having raised the objection that the

certificate was not filed, he was estopped thereafter to raise it, 422 under Section 1767 of Ballinger's Code, which provides that such a judgment shall estop all parties from raising any objections thereto which exist at or before the rendition thereof, and could have been presented as a defense to the application therefor, and declares that "the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings except in cases where the tax or assessments have been paid or the real estate was not liable to the tax or assessment." In *Miller v. Henderson*, 50 Wash. 200, the certificate was filed with the clerk of the court six weeks after the judgment of foreclosure but before the sale. The court, after alluding to the power of taxation which, it observed, was something more than a mere statutory right, and lay at the very foundation of government itself, said: "Hence, we have felt that statutory provisions relating to taxation were rather regulations upon the power than the source from which the power is derived; and being regulations, that they were to be regarded by the court as regulations are usually regarded when the proceedings had under them are attacked collaterally; that is to say, departures from the strict rule prescribed are to be regarded as fatal only where the departure affects some substantial right of the complaining party—where he is denied some substantial right which would have been granted him had the regulation been pursued according to its terms—but to deny relief where the departure complained of does not affect the complaining party either one way or the other. In the present case the delinquency thought to be fatal is of the latter sort.

423 This omission to file the certificate of delinquency in the office of the county clerk prior to the issuance and service of the summons could in no manner affect the rights of the appellants. Nor was the thing itself in any way necessary to constitute due process of law, as the proceeding prescribed by the statute would have been as valid and obligatory without this requirement as with it. It being therefore neither essential to the rights of the landowners nor to the legality of the statute, we think the omission of the clerk to comply with it at the time contemplated by the framers of the act did not so far deprive the court of jurisdiction as to require us to hold the sale invalid." It is to be observed that neither of these decisions goes so far as to hold that the filing of the certificate of delinquency with the court in the foreclosure proceedings may be wholly dispensed with without rendering the proceedings void, but that conclusion, we think, is properly inferable from what was decided, for if the filing of the certificate is not necessary to the jurisdiction of the Superior Court to proceed with the foreclosure, and if a judgment of foreclosure is valid in a case in which the certificate is filed six weeks after its rendition, it must follow that it is valid if the certificate is never filed. What is the precise office of the certificate of delinquency, and what is its function when filed with the clerk of the court in the foreclosure proceedings? It does not serve as notice to the County Treasurer to begin foreclosure proceedings, for he is the officer who issues it. It is not filed as notice to the delinquent tax payer, for the summons notifies him of the issuance of the certificate. If it be said
424 that it is to be filed with the clerk in order that the delinquent tax payer may know where to find it of record in case he seeks to ascertain whether it has been issued and foreclosure proceedings have been begun against him, the answer is that he can always ascertain at the office of the County Treasurer whether taxes on his property are delinquent and whether a certificate of delinquency has been issued. Nor is the certificate the pleading on which the judgment rests. The application for judgment serves that purpose. But it would appear from the record in the present case that although the certificate was not filed, it was exhibited to the court at the time when judgment was rendered, for the judgment entry recites that the plaintiff is the "owner and holder of the certificate of delinquency" etc. In *Smith v. Newell*, 32 Wash. 369, the court held that where the owners of property are given their day in court, and an opportunity to question the tax, and the tax appears to be just, the court ought not to declare it void because of the omission of a ministerial officer to perform a statutory duty unless it involve an injury incapable of correction. The court referred to the fact that the statute provides that no error or informality in the proceedings of any of the officers engaged in the assessment, levying or collection of taxes shall vitiate or in any manner affect the tax, but that the court may, in the foreclosure action, correct defects and supply omissions made by such officers. The court said: "This provision of the statute, it seems to us, was intended to enable the courts to correct just such omissions as were

made by the treasurer in this instance. It was intended to put it in the power of the court on the hearing of a tax foreclosure suit to render judgment as the evidence — justice of the case required; that is, it was intended that the court should inquire into the merits of complaints made against tax proceedings and allow them to prevail only when the matter complained of operated to the injury of the complaining party and is incurable by any judgment that can be entered in the foreclosure proceedings."

The revenue and taxation law of Washington is exceptionally lenient to the delinquent tax payer, and affords him unusual protection in providing that his property may not be sold for delinquent taxes except upon foreclosure proceedings and after a long period of delinquency; three years in the case of foreclosure by an individual certificate holder, coupled with the requirement that service of the summons shall be had upon the tax payer as in the case of civil actions, and five years in the case of foreclosure by the county. The highest court of the state has held that the legislature intended that the courts should be liberal in enforcing the collection of taxes, that owners of property are bound to take notice of the property which they own, and to know that taxes are due thereon and to pay the same, that the filing of the certificate of delinquency with the clerk of the court is not essential to due process of law, and might have been dispensed with by the legislature, and that the omission to file it is but an irregularity which must be objected to if at all, in the foreclosure proceeding. That construction of the law is binding upon us, and it follows that the judgment must be reversed and the cause remanded with instructions to dismiss the bill.

Opinion filed May 3, 1909,

F. D. MONCKTON,

*Clerk U. S. Circuit Court of Appeals
for the Ninth Circuit.*

426 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Appellants,

vs.

THE ONTARIO LAND COMPANY, a Corporation, Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and

decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed, with costs to the appellants, and the cause is remanded to the said Circuit Court with instruction to dismiss the bill.

It is further ordered, adjudged and decreed by this Court that the said appellants Charles H. Wilfong and May A. Wilfong, His Wife, and Walter J. Reed recover against the appellee The Ontario Land Company, (a Corporation,) for their costs herein expended, and have execution therefor.

(Endorsed:) Decree. Filed and entered May 3, 1909. F. D. Monckton, Clerk.

427 At a stated term, to wit: the October term, A. D. 190-, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room, in the City and County of San Francisco, on Wednesday, the twenty-sixth day of May, in the year of our Lord one thousand, nine hundred and nine.

Present:

The Honorable William B. Gilbert, Circuit Judge,
Honorable Erskine M. Ross, Circuit Judge,
Honorable William H. Hunt, District Judge.

No. 1630.

CHARLES H. WILFONG et ux. et al., Appellants,
vs.
THE ONTARIO LAND COMPANY, a Corporation, Appellee.

Order Denying Petition for Rehearing.

It is ordered that the petition for rehearing, heretofore filed in the above-entitled cause be, and hereby is denied.

428 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Appellants,
vs.

THE ONTARIO LAND COMPANY, a Corporation, Appellee.

Petition for Appeal to the Supreme Court of the United States.

Now comes the above named appellee, The Ontario Land Company, conceiving itself aggrieved by the order and decree made by the said United States Circuit Court of Appeals for the Ninth Circuit, on the 3d day of May, 1909, in the above-entitled cause,

wherein and whereby, among other things, it was ordered and decreed that the decree appealed from must be reversed and the cause remanded, with instructions to dismiss the bill, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is herewith filed, and prays that the appeal may be allowed, and a transcript of the record proceedings and papers upon which said order and decree is made, duly authenticated, may be sent to the Supreme Court of the United States, at Washington, D. C.

Dated, Sept. 27th, 1909.

A. L. AGATIN,
Solicitor for Appellee.

429 The foregoing petition for appeal is granted, and the claim of appeal therein made is allowed, and the same shall act as supersedeas upon the appellants giving bond in the sum of five hundred dollars.

Dated, Sept. 27, 1909.

(Signed)

WM. B. GILBERT,
United States Circuit Judge, Ninth Circuit.

(Endorsed:) Petition for Appeal to the Supreme Court of the United States, and Order Allowing Same. Filed Sep. 27, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

430 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and WALTER J. REED, Appellants,

vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

Assignment of Errors.

Comes now the appellee, The Ontario Land Company, and makes and files the following assignment of errors, upon which it will rely upon its appeal in the above-entitled cause from the order and decree made by this Honorable Court, in the said cause, to wit:

This Honorable Court erred:

1. In reversing the decree of the Circuit Court and remanding the cause with instructions to dismiss the Bill of Complaint.
2. In not affirming the decree of the Circuit Court, since, upon the admitted facts the appellee is entitled to the relief prayed for in its bill of complaint.
3. In holding and deciding that the pretended description of appellee's property in the tax proceedings were sufficient for the pur-

pose of sustaining the tax summons, tax judgment, tax deed
431 and the tax proceedings involved in said cause.

4. In holding and deciding that the decision of the United States Supreme Court in the Yordy case, reported in 29 Sup. Court Rep. 878, eliminates the question of defective description from the case.

5. In holding and deciding that the failure to file the application for tax judgment at the beginning of the tax proceedings, was not fatal to jurisdiction to enter said tax judgment.

6. In holding and deciding that the omission to file certificates of delinquency in said tax proceedings was not fatal to the validity of the tax foreclosure judgment.

7. In holding and deciding that the admitted title of the appellee to the property in controversy was divested by the tax proceedings and tax deeds relied on by appellants.

8. In not holding and deciding that the tax judgment was void for want of jurisdiction, because of the various defects in the tax foreclosure proceedings fully set out in the bill of complaint herein.

9. In not holding and deciding that the tax notice and summons was void for failure to conform to the statutes of Washington.

10. In not holding and deciding that the tax summons as published did not conform to the Statute of Washington, and was, therefore, ineffectual to confer jurisdiction.

11. In not holding and deciding that the tax deeds, independent of other considerations, were void because the descriptions of property therein contained are void on their face and not applicable to any property.

432 12. In not holding and deciding that the tax deeds were void because no notice of tax sale was posted or otherwise given, as required by Washington statute.

13. In not holding and deciding that the pretended tax foreclosure proceedings were wholly unauthorized and void, because not commenced prior to the time limited by Washington statute therefor.

Wherefore, the appellee The Ontario Land Company prays that the order and decree of the Circuit Court of Appeals be reversed, and that the decree of the Circuit Court be in all respects affirmed.

A. L. AGATIN,

Solicitor for Appellee, The Ontario Land Company.

(Endorsed:) Assignment of Errors. Filed Sep. 27, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

433 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,

vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

Bond on Appeal.

Know all men by these presents, that We, The Ontario Land Company, a corporation organized and existing under the laws of the State of Minnesota, principal, and American Surety Company of New York as surety, are held and firmly bound unto said Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, in the sum of Five Hundred Dollars, to be paid to said obligees, their executors, administrators and assigns, for the payment of which well and truly to be made, we bind ourselves and our successors, jointly and severally by these presents.

Sealed with our seal and dated this 27th day of September, 1909.

Whereas, the above named Ontario Land Company has appealed to the Supreme Court of the United States, to reverse an order and decree filed, made and rendered by the Circuit Court of
434 Appeals of the United States, for the Ninth Circuit in that certain cause pending in said Court, wherein Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed are appellants, and The Ontario Land Company is appellee.

Now, therefore, the condition of this obligation is such that, if the above named Ontario Land Company, appellee, shall prosecute said appeal to effect and answer all damages and costs if it fails to make good its plea, then this obligation shall be void; otherwise to be and remain in full force and virtue.

THE ONTARIO LAND COMPANY,
[SEAL] By CHESTER A. CONGDON,

Vice-President.

Attest:

JAMES WANLESS, *Secretary.*
AMERICAN SURETY COMPANY OF
NEW YORK,

Attest:

BRANTLEY W. DOBBINS,
Resident Assistant Secretary.
EUGENE W. ROLAND,
Resident Vice President.

Signed, sealed and delivered in presence of

FRED L. FARMER,
A. L. AGATIN.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

On this twenty-seventh day of September, in the year one thousand, nine hundred and nine, before me, John McCallan, a Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared Eugene W. Roland and Brantley W. Dobbins, known to me to be the Resident Vice-President and Resident Assistant Secretary respectively of the American Surety Company of New York the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

[SEAL.]

JOHN MCCALLAN,

*Notary Public in and for the City and County
of San Francisco, State of California.*

My Commission expires April 12, 1913.

STATE OF MINNESOTA,

County of St. Louis, ss:

On this 6th day of August, 1909, before me appeared Chester A. Congdon and James Wanless, to me personally known, who being by me duly sworn did say, the said Chester A. Congdon, that he is the Vice-President of The Ontario Land Company, a corporation organized and existing under the laws of the State of Minnesota, and the said James Wanless, that he is the secretary thereof; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation, by authority of its Board of Directors, and the said Chester A. Congdon and James Wanless acknowledged said instrument to be the free act and deed of said corporation.

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[SEAL.]

FRED L. FARMER,

Notary Public, St. Louis Co., Minnesota.

My commission expires Dec. 15, 1913.

The foregoing Bond was presented to me this 27th day of Sept. 1909, and was this day by me approved, as to form, amount, and sufficiency of security.

WM. B. GILBERT,

United States Circuit Judge, Ninth Circuit.

(Endorsed:) Bond on Appeal. Filed September 27, 1909. F. D. Mouckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

437 United States Circuit Court of Appeals for the Ninth Circuit.
No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,
vs.

THE ONTARIO LAND COMPANY, a Corporation, Appellee.

*Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and
Transcript of Record Upon Appeal to Supreme Court U. S.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing twenty-five (25) pages, numbered from and including one (1) to and including twenty-five (25), to be a true copy of the assignment of errors and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed therein, as the same remain on file and of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record constitute a true copy of the complete record in the above-entitled case and the Transcript of Record upon appeal therein to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this first day of November, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

438 United States Circuit Court of Appeals for the Ninth Circuit.
No. 1630.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,
vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

Citation on Appeal.

United States of America to Charles H. Wilfong and May Wilfong, his wife, and Walter J. Reed, Greeting:

You are hereby notified that in a certain cause in equity in the United States Circuit Court of Appeals for the Ninth Circuit, wherein The Ontario Land Company, a corporation, is complainant and appellee, and Charles H. Wilfong and wife and Walter J. Reed, are appellants, the said Ontario Land Company, appellee, has prayed an

appeal to the Supreme Court of the United States, from the order and decree in said cause entered, and that such appeal has been allowed;

Wherefore, you are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within sixty (60) days from the date hereof, and to show cause, if any there be, why the order and decree appealed from should not be reversed and set aside, and relief be granted to said appellant, as by it prayed, and as to justice and equity may appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27th day of September, 1909.

WM. B. GILBERT,
United States Circuit Judge, Ninth Circuit.

439 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named Benjamin S. Grosseup Solicitor for Plaintiffs by handing to and leaving a true and correct copy thereof with Benjamin S. Grosseup together with Copy of Assignment of Errors personally at Tacoma in said District on the 5th day of October, A. D. 1909.

C. B. HOPKINS,
U. S. Marshal,
By I. S. DAVISSON, *Deputy.*

Marshal's fees \$2.12.

440 [Endorsed:] Docketed. Original. United States Circuit Court of Appeals, for the Ninth Circuit. No. 1630. Charles H. Wilfong and May A. Wilfong, and Walter J. Reed, Appellants, vs. The Ontario Land Company, (a corporation) Appellee. Citation on Appeal. (No. 2.) I, the undersigned, Benjamin S. Grosseup, Solicitor of record for the above named Charles H. Wilfong and wife and Walter J. Reed, do hereby accept service in behalf of Charles H. Wilfong and wife and Walter J. Reed of said citation on this 5th day of October, 1909, and do hereby acknowledge receipt of a true copy of said citation on this date. Dated Oct. 5, 1909. B. S. Grosseup, Attorney and Solicitor for Charles H. Wilfong and wife and Walter J. Reed, in the U. S. Circuit Court of Appeals, Ninth Circuit. A. L. Agatin, Attorney and Counselor, Duluth, Minn., 800 Lonsdale Building. U. S. Marshal's Civil Docket No. 3150. Filed Oct. 18, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

441 In the Supreme Court of the United States.

THE ONTARIO LAND COMPANY, Appellant,

vs.

CHARLES H. WILFONG & WIFE, and WALTER J. REED, Appellee.

Statement Under Rule Ten (10) of the Supreme Court.

Now comes the above named appellant, and for the purpose of abbreviating the record to be printed on said appeal, makes the following statement under subdivision nine (9) of rule ten (10) of rules of this Court, to-wit: The appellant intends to rely on the assignment of errors hereto attached, and the only parts of the record which are necessary for the consideration of said error are the following, to-wit: The entire transcript of record as the same is on file in this Court, being a printed transcript, excepting therefrom, all of the pages marked 143 to 179 both inclusive; pages 194 to 215 both inclusive; pages 237 to 272 both inclusive; pages 297 to 333 both inclusive; it being intended by the appellant that the entire record shall be printed as it is now on file excepting only the pages aforesaid.

That the reason for excluding from the printing of said record, pages 143 to 179, 194 to 215, 237 to 272, 297 to 333, is, that the pages so excepted contain descriptions of property not involved in this case, and wholly unnecessary for consideration by the Court of the errors, relied on by the appellant, and the Clerk of this Court is requested in printing said record to exclude from the printed record the pages above referred to.

Dated, February 7th, 1910.

A. L. AGATIN,
Solicitor for Appellant.

442 United States Circuit Court of Appeals for the Ninth Circuit.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,

vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

Comes now the appellee, The Ontario Land Company, and makes and files the following assignment of error, upon which it will rely upon its appeal in the above entitled cause from the order and decree made by this Honorable Court, in the said cause, to-wit:

This Honorable Court erred:

1. In reversing the decree of the Circuit Court and remanding the cause with instructions to dismiss the Bill of Complaint.
2. In not affirming the decree of the Circuit Court, since, upon the admitted facts the appellee is entitled to the relief prayed for in its bill of complaint.

3. In holding and deciding that the pretended description of appellee's property in the tax proceedings were sufficient for the purpose of sustaining the tax summons, tax judgment, tax deed and the tax proceedings involved in said cause.

4. In holding and deciding that the decision of the United States Supreme Court in the Yordy case, reported in 29 Sup. Court. Rep. 878, eliminates the question of defective description from the case.

5. In holding and deciding that the failure to file the application for tax judgment at the beginning of the tax proceedings, was not fatal to jurisdiction to enter said tax judgment.

6. In holding and deciding that the omission to file certificates of delinquency in said tax proceedings was not fatal to the validity of the tax foreclosure judgment.

443 7. In holding and deciding that the admitted title of the appellee to the property in controversy was divested by the tax proceedings and tax deeds relied on by appellants.

8. In not holding and deciding that the tax judgment was void for want of jurisdiction, because of the various defects in the tax foreclosure proceedings fully set out in the bill of complaint herein.

9. In not holding and deciding that the tax notice and summons was void for failure to conform to the Statutes of Washington.

10. In not holding and deciding that the tax summons as published did not conform to the Statute of Washington, and was, therefore, ineffectual to confer jurisdiction.

11. In not holding and deciding that the tax deeds, independent of other considerations, were void because the descriptions of property therein contained are void on their face and not applicable to any property.

12. In not holding and deciding that the tax deeds were void because no notice of tax sale was posted or otherwise given, as required by Washington statute.

13. In not holding and deciding that the pretended tax foreclosure proceedings were wholly unauthorized and void, because not commenced prior to the time limited by Washington statute therefor.

Wherefore, the appellee The Ontario Land Company prays that the order and decree of the Circuit Court of appeals be reversed, and that the decree of the Circuit Court be in all respects affirmed.

A. L. AGATIN,

Solicitor for Appellee, The Ontario Land Company.

444 [Endorsed:] 678—21904. In the Supreme Court of the United States. The Ontario Land Company, Appellant, vs. Charles H. Wilfong & Wife, and Walter J. Reed, Appellee. Statement under Rule Ten (10) of the Supreme Court. A. L. Agatin, Attorney and Counselor, Duluth, Minn., 800 Lonsdale Building.

445 [Endorsed:] File No. 21.904. Supreme Court U. S., October Term, 1909. Term No. 678. The Ontario Land Company, Appellant, vs. Charles W. Wilfong et ux., et al. Assignment of Errors and Designation by Counsel for Appellant of Parts of Record to be Printed. Filed February 11, 1910.

446 In the Supreme Court of the United States.

THE ONTARIO LAND COMPANY, Appellant,

vs.

CHARLES H. WILFONG & WIFE and WALTER J. REED, Appellee.

Statement Under Rule Ten (10) of the Supreme Court.

Now comes the above named appellant, and for the purpose of abbreviating the record to be printed on said appeal, makes the following statement under sub-division nine (9) of rule ten (10) of the rules of this Court, to-wit; The appellant intends to reply on the assignment of errors hereto attached, and the only parts of the record which are necessary for the consideration of said error are the following, to-wit; The entire transcript of record as the same is on file in this Court, being a printed transcript, excepting therefrom, all of the pages marked 143 to 179 both inclusive; pages 194 to 215 both inclusive; pages 237 to 272 both inclusive; pages 297 to 333 both inclusive; it being intended by the appellant that the entire record shall be printed as it is now on file excepting only the pages aforesaid.

That the reason for excluding from the printing of said record, pages 143 to 179, 194 to 215, 237 to 272, 297 to 333, is, that the pages so excepted contain descriptions of property not involved in this case, and wholly unnecessary for consideration by the Court of the errors, relied on by the appellant, and the Clerk of this Court is requested in printing said record to exclude from the printed record the pages above referred to.

Dated, February 7th 1910.

A. L. AGATIN,

Solicitor for Appellant.

447 United States Circuit Court of Appeals for the Ninth Circuit.

CHARLES H. WILFONG and MAY A. WILFONG, His Wife, and
WALTER J. REED, Appellants,

vs.

THE ONTARIO LAND COMPANY (a Corporation), Appellee.

Comes now the appellee, The Ontario Land Company, and makes and files the following assignment of error, upon which it will rely upon its appeal in the above entitled cause from the order and decree made by this Honorable Court, in the said cause, to-wit:

This Honorable Court erred:

1. In reversing the decree of the Circuit Court and remanding the cause with instructions to dismiss the Bill of Complaint.
2. In not affirming the decree of the Circuit Court, since, upon the

admitted facts the appellee is entitled to the relief prayed for in its bill of complaint.

3. In holding and deciding that the pretended description of appellee's property in the tax proceedings were sufficient for the purpose of sustaining the tax summons, tax judgment, tax deed and the tax proceedings involved in said cause.

4. In holding and deciding that the decision of the United States Supreme Court in the Yordy case, reported in 29 Sup. Court Rep. 878, eliminates the question of defective description from the case.

5. In holding and deciding that the failure to file the application for tax judgment at the beginning of the tax proceedings, was not fatal to jurisdiction to enter said tax judgment.

6. In holding and deciding that the omission to file certificates of delinquency in said tax proceedings was not fatal to the validity of the tax foreclosure judgment.

448 7. In holding and deciding that the admitted title of the appellee to the property in controversy was divested by the tax proceedings and tax deeds relied on by appellants.

8. In not holding and deciding that the tax judgment was void for want of jurisdiction, because of the various defects in the tax foreclosure proceedings fully set out in the bill of complaint herein.

9. In not holding and deciding that the tax notice and summons was void for failure to conform to the statutes of Washington.

10. In not holding and deciding that the tax summons as published did not conform to the Statute of Washington, and was, therefore, ineffectual to confer jurisdiction.

11. In not holding and deciding that the tax deeds, independent of other considerations, were void because the descriptions of property therein contained are void on their face and not applicable to any property.

12. In not holding and deciding that the tax deeds were void because no notice of tax sale was posted or otherwise given, as required by Washington statute.

13. In not holding and deciding that the pretended tax foreclosure proceedings were wholly unauthorized and void, because not commenced prior to the time limited by Washington statute therefor.

Wherefore, the appellee The Ontario Land Company prays that the order and decree of the Circuit Court of appeals be reversed, and that the decree of the Circuit Court be in all respects affirmed.

A. L. AGATIN.

Solicitor for Appellee, The Ontario Land Company.

449 [Endorsed:] 678/21,904. In the Supreme Court of the United States. The Ontario Land Company, Appellant, vs. Charles H. Wilfong & Wife, and Walter J. Reed, Appellee. State-

ment under rule ten (10) of the Supreme Court. A. L. Agatin, Attorney and Counselor, Duluth, Minn, 800 Lonsdale Building. Due service by copy of the within statement is hereby admitted at Tacoma, Washington 17 day of February 1910. B. S. Grosseup, Solicitor for Appellee.

450 [Endorsed:] File No. 21,904. Supreme Court U. S. October Term, 1909. Term No. 678. The Ontario Land Company, Appellant, vs. Charles W. Wilfong et al. Proof of service of assignment of errors and designation by appellant of parts of record to be printed. Filed February 21, 1910.

Endorsed on cover: File No. 21,904. U. S. Circuit Court Appeals, 9th Circuit. Term No. 160. The Ontario Land Company, appellant, vs. Charles H. Wilfong and May Wilfong, his wife, and Walter J. Reed. Filed November 20th, 1909. File No. 21,904.

**SUPREME COURT
OF THE UNITED STATES.**

OCTOBER TERM, A. D. 1911

NO. 160

ONTARIO LAND COMPANY,
APPELLANT,

vs.

CHARLES H. WILFONG, ET AL,
APPELLEES.

BRIEF FOR APPELLANT ON THE MERITS.

STATEMENT OF THE CASE.

This appeal is from a judgment and decree of the Circuit Court of Appeals for Ninth Circuit, reversing a decree of the Circuit Court for the Eastern District of Washington, in favor of the Appellant. The suit was brought for the purpose of cancelling and setting aside, as a cloud on appellant's title, certain tax deeds issued by the County Treasurer of Yakima County, to the Appellees, under which the latter claimed title in fee to the property described in the Bill of Complaint, adversely to the regularly derived title of appellant.

• The bill of complaint properly alleging diversity of citizenship and jurisdictional value, averred ownership of lands and set out in detail, the several defects in the tax titles claimed by appellees, which it was claimed rendered the appellees' pretended tax title void; and among other things expressly relied on for protection as against appellees' asserted claim of title upon the "due process of law" clause of the Fourteenth Amendment.

(Record, pp. 1 to 6.)

By the bill appellant offered to do equity and to pay any amount which the court might adjudge as being justly due for taxes against said property (Record, p. 9) and prayed relief only on condition of such payment to appellees or into court. The only pleading on the part of appellees was an answer to the merits, which, after admitting jurisdictional facts, denied invalidity of the tax titles, and by way of affirmative relief, set up the tax deeds as their only claim of title.

(Record, pp. 20 to 25.)

That the appellant was the owner in fee of the lands in controversy was conceded, unless its title had been divested by the tax proceedings and deeds relied on by the defendants. The

contention of the appellant was and is that the tax deeds in question were wholly void and ineffectual to divest the title of the appellant, because :

1st. The pretended description of appellant's property in the tax judgment and deeds is absolutely void.

2nd. That independently of the first ground, the pretended tax judgment is void for want of jurisdiction by reason of several defects, more fully hereinafter discussed.

As disclosed by the testimony, the facts bearing upon this question of description, are as follows: Appellant's grantor having purchased from the government's patentee, the tract of which these lots are a part, caused it to be duly platted, May 27th, 1889, as "Capitol Addition to North Yakima, Washington," (pp. 142-143 and Exhibit 5, of Record) and afterwards, May 24th, 1890, duly conveyed the platted tract to the appellant (p. 61 of Record). Near the center of this plat (Exhibit 5, p. 142 of the Record) there was a large tract marked "Reserved" and not subdivided into either blocks or lots. Fourteen years later, September 27th,

1904, appellant duly platted and subdivided the said tract marked "Reserved," as "Heerman's Addition to North Yakima." (p. 145 and Plaintiff's Exhibit "6.")

The lands in controversy are a part of the said tract so originally marked "Reserved," and constitute Blocks 3 and 4 of said "Heerman's Addition to North Yakima," and are so described in the complaint. (p. 2 Record.)

To prove title in themselves, defendants introduced in evidence a pretended tax judgment of September 2nd, 1902, of the Superior Court of Yakima County, foreclosing a tax lien of the county for the taxes for 1892-3, upon blocks 353 and 373 of the Capitol Addition to North Yakima, and a tax deed of Sept. 13th, 1902, of blocks so numbered to appellants Wilfong and Reed executed in pursuance of a sale had under said tax judgment. (Appellant's Exhibits "1" and "2," pp. 121, 124.) The plat of "Capitol Addition to North Yakima," (Plaintiff's Exhibit "5," p. 142) shows that *there was never any such block as block 353 or as block 373. Neither was there any evidence or pretext that any part of either the platted or reserved tract had ever been known by such numbers.* The only reason assigned for supposing the descriptions in the tax judgment and deed to describe

or cover the property in controversy, is that *if* the tract marked "Reserved" upon the plat of "Capitol Addition to North Yakima" had been originally subdivided into blocks, and *if* the scheme of consecutive numbering disclosed by the plat had been extended over that tract, these lots in controversy *would have been* located in blocks that would have been numbered 353 and 373, respectively.

Subject to objections for immateriality, some evidence was also introduced by defendants, tending to show that at some time it was understood by the manager of the appellant company that the numbers 353 and 373 had been used in tax proceedings to designate portions of the tract marked "Reserved." (pp. 48-52, but see p. 53.) *There was no evidence of any record by any of the tax officers, indicating to what property it was, that the numbers 353 and 373 were by them intended to be applied.* It was contended by appellant that since Washington real estate taxes are assessed and enforced against the property only, by a proceeding *in rem*, and do not import a personal obligation, it is an indispensable condition of their validity that they plainly describe the land taxed; and that to hold that the tax proceedings in question had divested title to lands which they had not

described, would be to take property without due process of law within the meaning of the Fourteenth Amendment of the Federal Constitution; and that this result would not be changed, though appellant had accidentally received information what property it was to which the tax officers intended that their impossible descriptions should apply.

On the subject of jurisdictional and other defects, rendering the tax judgment and deeds void, irrespective of the sufficiency of description, it was contended that the tax proceedings were null and void because it was shown by proof without contradiction, that

(a) No certificates of delinquency have ever been filed with the Clerk of Court, as required by the State Revenue Law. (Record pp. 36 to 39.)

(b) No complaint or application for the foreclosure of the tax lien was filed before publication of summons or entry of the tax judgment. (Record p. 36-39.)

(c) The summons or notice as issued and published did not conform substantially to the Statute and was, therefore, ineffectual to confer jurisdiction.

(d) Tax deeds void because no notice of sale was posted or otherwise given as by law required. (Par. 25 of the Bill, p. 8 of Record.) This fact was claimed to be established by failure to prove the posting of such notice by appellees, the burden of proof whereof being on them.

Upon the hearing of the suit on the merits before Hon. C. H. Hanford, the court rendered its decision in favor of the appellant, holding the tax deeds absolutely void on the following grounds:

(a) That the appellant's property, not having been described, in any stage of the tax proceedings, was never listed or assessed for taxation, and could not, therefore, become delinquent for non-payment of taxes, or subject to foreclosure.

(b) That the failure to file certificate of delinquency or of the application for foreclosure was jurisdictionally fatal to the foreclosure (p. 128-130.)

(c) The published summons was fatally defective in failing to convey notice that appellant's property was affected by the tax proceeding. (p. 130 Record.)

(d) That the tax deeds relied on by the defendants are void on their face because the description of the property therein contained is void and impossible (p. 130 Record.) This decision will be found published in 162 Fed. Rep. 999.

Deeming the foregoing sufficient grounds for its conclusions, the trial court did not pass upon or refer to any other points raised by the appellant against the validity of the tax title, (p. 129 Record), and in view of the offer made in the bill of complaint to do equity, (pp. 9-129) the court imposed the following as a condition to the relief, which we quote from Judge Hanford's memorandum decision:

"As the nearest approximation to an equitable determination of the rights of the parties, it will be assumed that the defendants have succeeded to the right of Yakima County to collect the taxes chargeable to this property, and the complainant will be required to pay to each of them \$76.75 and interest, or deposit the same in the Registry of this Court, and upon that condition the relief prayed for will be decreed."

The amounts thus required to be paid, having been duly deposited in the Registry of the Court for the use of the appellant, (p. 131-132

Record), a final decree was thereupon entered, reciting the payment into court of these amounts, and adjudging the invalidity of the tax deeds.

Thereupon an appeal was taken to the Court of Appeals for Ninth Circuit, wherein that Court held:

1. That the question of defective description was wholly eliminated from the case by the case of

Ontario Land Co. vs. Yordy, 212 U. S., 152.

(Record, pages 149-150.)

2. That the failure to file petition or application for judgment was not jurisdictional. (Record pp. 152-153.)

3. That the failure to file certificates of delinquency was not jurisdictional and reversed the decree of the Circuit Court with instructions to dismiss the bill, ignoring for some reason all of the other points relied upon by appellant to sustain the lower court's decree, which

points are more fully stated in the assignment of errors in this appeal.

The assignment of errors relied on by appellant will be discussed in the order in which they naturally group themselves.

ASSIGNMENT OF ERRORS.

Comes now the appellant, The Ontario Land Company, and makes the following assignment of error, upon which it will rely upon its appeal in the above entitled cause.

The Lower Court erred:

1. In reversing the decree of the Circuit Court and remanding the cause with instructions to dismiss the Bill of Complaint.

2. In not affirming the decree of the Circuit Court, since, upon the admitted facts the appellant is entitled to the relief prayed for in its bill of complaint.

3. In holding and deciding that the pretended description of appellant's property in the tax proceedings were sufficient for the purpose of sustaining the tax summons, tax judgment, tax deed and the tax proceedings involved in said cause.

4. In holding and deciding that the decision of the United States Supreme Court in the Yordy case, reported in 29 Sup. Court Rep.

878, eliminates the question of defective description from the case.

5. In holding and deciding that the failure to file the application for tax judgment at the beginning of the tax proceedings, was not fatal to jurisdiction to enter said tax judgment.

6. In holding and deciding that the omission to file certificates of delinquency in said tax proceedings was not fatal to the validity of the tax foreclosure judgment.

7. In holding and deciding that the admitted title of the appellant to the property in controversy was divested by the tax proceedings and tax deeds relied on by appellees.

8. In not holding and deciding that the tax judgment was void for want of jurisdiction, because of the various defects in the tax foreclosure proceedings fully set out in the bill of complaint herein.

9. In not holding and deciding that the tax notice and summons was void for failure to conform to the statutes of Washington.

10. In not holding and deciding that the tax summons as published did not conform to the Statute of Washington, and was, therefore, ineffectual to confer jurisdiction.

11. In not holding and deciding that the tax deeds, independent of other considerations, were void because the descriptions of property therein contained are void on their face and not applicable to any property.

12. In not holding and deciding that the tax deeds were void because no notice of tax sale was posted or otherwise given, as required by Washington statute.

13. In not holding and deciding that the pretended tax foreclosure proceedings were wholly unauthorized and void, because not commenced prior to the time limited by Washington statute therefor.

Wherefore, the appellant, The Ontario Land Company prays that the order and decree of the Circuit Court of Appeals be reversed, and that the decree of the Circuit Court be in all respects affirmed.

A. L. AGATIN,
Solicitor for Appellant, The Ontario Land Company.

ARGUMENT AND POINTS.

FIRST.

**The Lack of Adequate Description Renders Tax Titles
Void and the Question Is Not Foreclosed by
Former Decisions.**

The facts relative to this matter of description are accurately and exactly set out in the statement of facts, and they present the simple question whether the words "Blocks 353 and 373, Capitol Addition to North Yakima" can be said to describe, for the purposes of a tax sale, property, which at the time had never been platted or divided or supposed to be platted or divided into blocks, and which had never borne either upon any plat or upon any public record or by the authority of the owner, or by any sort of lay or official usage, either the numbers 353, 373, or any other numbers.

The argument in support of the invalidity of these descriptions will be found in full on pages 22 to 35 of our Brief on motion to affirm (to which the court's attention is respectfully directed), and will not be here repeated. Counsel contends, however, that this question is entirely eliminated from the case by the decision of this court in the *Yordy* case (212, U. S.

152) and the same case in the State Court (44 Wash. 239), and is no longer an open question.

That the claim of counsel in this respect is unfounded, was our contention on motion to affirm and the argument will not be here repeated, but the court's attention is again respectfully directed to our discussion of the *Yordy* decisions and their bearing on this case, on pages 12 to 22 of our Brief on motion to affirm, and nothing more need be added here, except to say that the *Yordy* case (212 U. S. 152) is an authority for us rather than against us, on the question of sufficiency of description, as a mere question of *legal* description, divorced from the federal question of "due process of law" which alone was there involved.

The court will clearly appreciate the distinction between the question of description in this case and the same question as it was involved in *Yordy* case in this court.

This case was originated in the federal court and as indicated in our Brief on motion to dismiss, by force of judiciary act creating Court of Appeals, every question is reviewable here, and not exclusively *federal* questions.

(See pp. 10 to 11, Brief on Motion to Dismiss).

The question in the Yordy case was not, whether the description was or was not sufficient to give court jurisdiction for the purpose of tax summons and judgment, but whether *in spite* of the admittedly insufficient description, the appellant was deprived of that opportunity to be heard which is protected by the 14th amendment, when as a matter of fact, because of actual knowledge, the opportunity to be heard was complete.

In other words, the question in the Yordy case did not depend upon the sufficiency of description at all, and that question was not involved, except as an abstract question.

On the other hand, the question of description in this case is vital, as a question of jurisdiction, and not as a question of "due process."

Hence, the Court's inquiry here is not, as was in the Yordy case, whether opportunity to be heard was denied, but whether in a proceeding *in rem*, real property can be subjected to *jurisdiction* of a court, in a tax proceeding, where the property in question is nowhere described in any legal or official way, or in any way amounting to constructive seizure.

As already noticed, the Washington tax proceeding is purely *in rem*. The divestment of title through such a proceeding is manifestly impossible without a description of the property affected, and the question of the sufficiency of description is determinable by the law of notice, exacting various standards of certainty.

Where the hazard of oppression increases, as in a tax proceeding, which aims at the divestment of title *in invitum* in the exercise of a naked statutory power, upon constructive notice, and through a foreclosure of a lien which is always for a mere fraction of the property value, amounting to a species of forfeiture, a high degree of accuracy and certainty is exacted. Nor can the lack of the description be cured by the owner's personal knowledge of the tax, whether accidentally derived or otherwise, as shown in our Brief on motion to dismiss on pages 32 to 35.

The question at hand here is purely a question of *jurisdiction*.

This court in the *Yordy* case freely admits our claim as to the legal inadequacy of the pretended description, (See p. 156, *Ontario Land vs. Yordy*, Vol. 212 U. S.) and that decision, when properly understood, can hardly

be claimed, as contended by counsel and assumed by Court of Appeals, to be an authority for the appellee on this question.

As to the bearing of the State decision in the Yordy case (44 Wash. 239) nothing need be added to the discussion found on pages 17 to 21 of our Brief on Motion to Dismiss, careful consideration of which by the Court is respectfully invited.

It is respectfully submitted that the tax summons, notice, judgment and tax deeds are absolutely void for want of description.

SECOND.

Jurisdictional and Other Defects Rendering Tax Judgment and Deeds Null and Void.

(a) Tax Judgment void because of failure to file application.

The evidence in this case conclusively shows that the tax judgment upon which the tax deeds are based, was entered on September 2nd, 1902, and not later. It also shows that the complaint or application for judgment of foreclosure was not filed until the day of entry of judgment, viz: September 2nd, 1902. It, therefore, appears that prior to the date of the entry of

judgment, there was nothing filed in Court to show that any action was pending. The only service of summons was had by publication Nov. 1st to December 13th, 1901, ten months before filing of application, and the judgment was entered by default. (pp. 36, 37, 76 Record.)

The State Court has repeatedly held that the tax foreclosure proceedings and the service of summons thereunder, are governed by the general statutes applicable in the commencement of "civil actions."

Williams v. Pittock, 35 Wash., 271.
McManus v. Morgan, 80 Pac., 786.
Woodham v. Anderson, 32 Wash., 500.
Bartels v. Christianson, 90 Pac., 658.

The statute under which the service was attempted to be made in the tax proceedings here involved is Sec. 4878 Bal. Code, which reads as follows:

"The publication shall be made in a newspaper printed and published in the county where the action is brought once a week for six consecutive weeks: Provided, *That publication of summons shall not be had until after the filing of the complaint*, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication, as aforesaid."

The requirement for filing the complaint before publication is therefore, jurisdictional:

Barber v. Morris, 37 Minn., 194.
 Murphy v. Lyons, 19 Neb., 689 (28 N. W. Rep. 328).
 Anderson v. Coburn, 27 Wis., 558.
 Witt v. Meyer, 69 Wis., 595.
 17 Enc. Pl. & Pr., 51-56.
 Kleber Void Judicial Sales, Sec. 122.
 35 N. W. 25; 61 Wis., 185; 99 Mo., 638.

The State court in *McManus v. Morgan*, 80 Pac., 786, held that filing of an affidavit for publication in such cases is jurisdictional; *a fortiori* the filing of the complaint, which is expressly required by statute and which is the commencement of the action, must be jurisdictional.

In *Klenk v. Byrne*, 143 Fed., 1008, Judge Hanford in a similar case under the tax laws of Washington held a tax judgment, entered without a previous filing of a complaint, void for want of jurisdiction.

Inasmuch as the statute, under the sole authority of which service by publication was authorized, expressly provides that there shall be no publication "*until after* the filing of the complaint," the pretended service of summons by publication in the tax proceeding in question,

had some ten months prior to the filing of the complaint, was a mere nullity and the tax judgment thereon is, therefore, void for want of jurisdiction under all the authorities.

(b) Failure to File Certificate of Delinquency Fatal to Jurisdiction.

The revenue law under which the tax proceedings in question were instituted (being a foreclosure by county) (Sec. 1751C. *supra*) expressly provides that:

"After the expiration of five years from the date of delinquency when no certificate of delinquency has been issued, the County Treasurer shall proceed to issue certificates of delinquency on said property to the county, and shall *file said certificates, when completed, with the Clerk of the Court, and the Treasurer shall thereupon* * * * proceed to foreclose in the name of the County the tax liens embraced in such certificates. * * *"

It appears from the evidence in this action that no certificates or certificate of delinquency "have ever been filed with the Clerk of said court." (p. 38-39 Record). The filing of said certificates was a jurisdictional prerequisite to the entry of any judgment in said tax foreclosure proceedings against the property. The

Statute above referred to, only authorizes the Treasurer "thereupon," to-wit; upon the filing with the Clerk of the Court of said certificates, to "proceed to foreclose the tax liens embraced in such certificates."

The right of the treasurer to bring such proceedings being purely statutory there is no jurisdiction of the Court in a tax foreclosure suit by the County over a particular tract of land, unless said condition precedent is complied with by filing of a certificate against that particular land with the Clerk of the Court before proceedings of foreclosure are instituted, and said filing of such certificate must affirmatively appear from the record.

Barber v. Morris, 37 Minn., 194 (33 N. W. Rep. 559).

Galpin v. Page, 18 Wall., 350.

And authorities cited in next and preceding paragraph.

The Court of Appeals refused to sustain this claim upon the ground that the State Court held otherwise in *Miller v. Henderson*, 50 Wash. 200.

(See Court of Appeals, opinion pp. 151-154 Record).

But the state decision relied upon by the Court of Appeals did not decide the precise question, at all, (See pp. 153-154 Record), and its decision was not made until August 6th, 1908, and long after the Circuit Court had jurisdiction of the cases and had otherwise decided.

(See Judge Hanford's opinion, p. 128-130 Record).

(c) *The Tax Judgment is Void for Want of Jurisdiction, Because the Tax Summons is Not in Conformity to Law.*

The summons does not inform the defendants that any complaint was filed in Court, or that it was filed at all. The State Court has repeatedly held that in tax foreclosure proceedings, the *form* of summons and its contents must conform to section 4878 Bal. Code.

Williams v. Pittock, 35 Wash., 271.
 Woodham v. Anderson, 32 Wash., 500.
 McManus v. Morgan, 80 Pac., 786.
 Bartels v. Christianson, 90 Pac., 658.

The summons in this case nowhere states or informs the defendants that any complaint has been filed nor where it is filed. The form given

in Sec. 4878 requires the statement that the "complaint has been filed with the Clerk of said Court."

That section provides for a publication of summons generally and contains this proviso; "provided that publication of summons shall not be had *until after* filing of the complaint."

The requirement for filing complaint before publication, as already shown, is jurisdictional.

It will be observed that Section 4878, after prescribing the necessity of the filing of the complaint, states, in a general way, what the summons shall contain, without specifying all the requirements necessary for a valid summons, and ends with the following mandatory language: "Said summons for publication *shall* be substantially as follows." The form given in this section among other things requires the defendant to answer the complaint and "in case you fail so to do, judgment will be rendered against you according to the demand of the complaint, *which has been filed with the Clerk of said Court.*"

The summons under consideration is absolutely silent on the subject whether the complaint has been filed or not and there is nothing

in the summons which would substantially inform the defendant that any complaint was filed in the Court.

The failure in the summons to state that the complaint has been filed is a substantial departure from the statutory requirements for a summons and therefore the court acquired no jurisdiction to enter judgment and that the judgment entered thereon is wholly void.

Brown on Jurisdiction, Sec. 41.

Wade's Law of Notice, Second Ed., Sec. 1030.

26 Am. & E. Enc. Law, p. 692.

Sutherland on Statutory Const., 454-455.

Maxwell on Interpretation of Statutes, 333-337.

Blackwell on Tax Titles, 287-288.

Odell v. Campbell, 9 Ore., 298, 305.

Lynam v. Milton, 44 Cal., 630.

Hayes v. Lewis, 21 Wis., 663.

Kendell v. Washburn, 14 How. Pr.

Durham v. Betterton, 79 Tex., 223.

Fernekes v. Case, 75 Iowa, 152.

Black v. Clendinin, 3 Mont., 44.

Caulkins v. Miller, 55 Neb., 601.

Deleware v. Bank, 77 S. W., 628 (Tex.).

20 Enc. Pl. & Pr., p. 1115.

Cleffern v. Tomlinson, 62 Minn., 197.

The judgment is void because the summons required answer "within 60 days after first publication" instead of "within 60 days after the date of the first publication."

This is misleading; "60 days after *first* publication" means 60 days after the expiration of a week from the date of the first publication. Such summons is void under the State decisions.

Woodham v. Anderson, 32 Wash., 500.
 Thompson v. Robbins, 32 Wash., 149.
 Bailey v. Hood, 80 Pac., 559.
 Dolan v. Jones, 79 Pac., 640.
 Young v. Droz, 80 Pac., 810.

(d) *The tax deeds are void because no notice of sale was posted or otherwise given.*

The statute under which the deeds were executed, expressly requires the Treasurer ten days before the sale, to post notice of the time and place thereof, and prescribes the form of such notice, (Bal. Code, 1756.) This requirement is mandatory and the failure to observe it makes the sale void.

Martin v. Barbour, 140 U. S., 634; 35 Law Ed. 546 (549).

McCord v. Sullivan, 80 N. W., 989.

Olson v. Bagley, 37 Pac., 37.

Sweigle v. Gates, 84 N. W., 481.

Blackwell v. First National Bank, 63 Pac.
 43.

Baumgardner v. Fowler, 34 Atl. Rep.,
 537.

Olson v. Phillips, 80 Minn., 339.

Rustin v. Merchants, etc., 47 Pac., 300.

Alexander v. Gordon, 101 Fed. 91 (96).

Black on Tax Titles, p. 205.
2 Cooley on Taxation, 928-930 (3rd Ed.).

The record in the case at bar is entirely silent as to notice of the sale being posted. This being so, the fact should be deemed established that there was no such notice, because the burden is on the tax purchaser to show that the notice was posted, and we objected to their introduction in evidence on that ground. (p. 47-48 Record.)

Williams v. Peyton, 4 Wheat., 77.
Ransom v. Williams, 2 Wall., 313.
State ex. rel. Brooks v. Inhabitants, etc.,
52 Atl., 238.
Black on Tax Titles, 2nd Ed., Secs. 346,
443.
2 Cooley on Taxation, 915-916.

The burden of proof as to notice of sale is not changed by the statute of Washington, Bal. Code 1767 *supra*, providing that:

“Deeds executed by the County Treasurer shall be *prima facie* evidence * * * that the sale was *conducted in the manner required by law*.”

This statute only makes the tax deed evidence of the *proceeding at the sale*; such as, that the

sale was on Saturday, that it was at public auction and to the person offering to pay the amount for the least quantity of land, that it was between the hours of 9 a. m. and 4 p. m., etc. The rule of evidence provided by the statute quoted does not relate to any *proceedings prior to the sale*.

2 Cooley on Taxation (3rd Ed.), 1006.
 Wilson v. Lemon, 23 Ind., 433.
 Beewman v. Bingham, 5 N. Y., 366.
 Westbrook v. Willey, 47 N. Y., 458.
 Carpenter v. Shinnars, 41 Pac. 473 (Cal.)
 Kepley v. Fouke, 58 N. E. 303 (Ill.).
 King v. Cooper, 38 S. E., 924 (N. C.).
 Johnson v. Harper, 18 So. 198 (Ala.).
 Carnhan v. Sieber, 82 Pac., 592 (Colo.).
 Pelham v. Beggs, 72 Pac., 1077 (Colo.).
 Ayer v. Dillard, 33 So., 714 (Fla.).

CONCLUSION.

The record in this case conclusively shows that at the time of the original hearing the property in controversy was of the value of more than Thirty-two Thousand Dollars (\$32,000.00). (Record p. 41) and the appellees seek to take away from us this property upon a technical tax title for which they paid \$76.75, which with full interest has been repaid to them by appellants and deposited in Court for their use (See pp. 131-132 Record), pursuant

to the tender in the bill, (See p. 9 and 129-130 Record) and we respectfully submit, that it is no less the duty of a court to protect the citizen against unnecessary sacrifice of property than it is to enforce the payment of a tax, and we beg to close by quoting from the opinion of the Circuit Court: (p. 129 Record).

“A Court of Equity will not aid an owner of property in any attempt to evade payment of taxes, but this Court is not called upon to do any such thing in this case, as the complainant in its bill of complaint offers to comply with any terms which the Court may impose and to pay whatever sum the Court shall require to be paid on account of taxes. In view of this offer the Court will not refuse to exert its powers to prevent an unwarranted confiscation. The law makes ample provision concerning unwilling and negligent tax debtors. Contributors to the public revenue for support of the Government are entitled to protection of their legal rights. Public officers should be sustained in proceedings for the collection of taxes in the manner prescribed by law, but unlawful and surreptitious attempts to confiscate property are detrimental to the public welfare, and when appealed to, the Courts are bound to exert their authority to prevent such a despoiling of individual rights, by public officials. When the officers charged with the duty of enforcing the revenue laws have flagrantly neglected to observe the essential requirements of lawful procedure, it is enough to exact full payment of the

amount justly due as a condition precedent to the granting of relief, so that the Government shall receive from property owners what is justly due and no more."

We respectfully submit the decree should be reversed.

A. L. AGATIN,
*Solicitor for Appellant, The Ontario Land
Company.*

WILLIAM W. BILLSON, *of Counsel.*

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UNITED STATES SUPREME COURT

Supreme Court of the United States

October Term, A. D. 1911

No. 130

THE ONTARIO LAND COMPANY

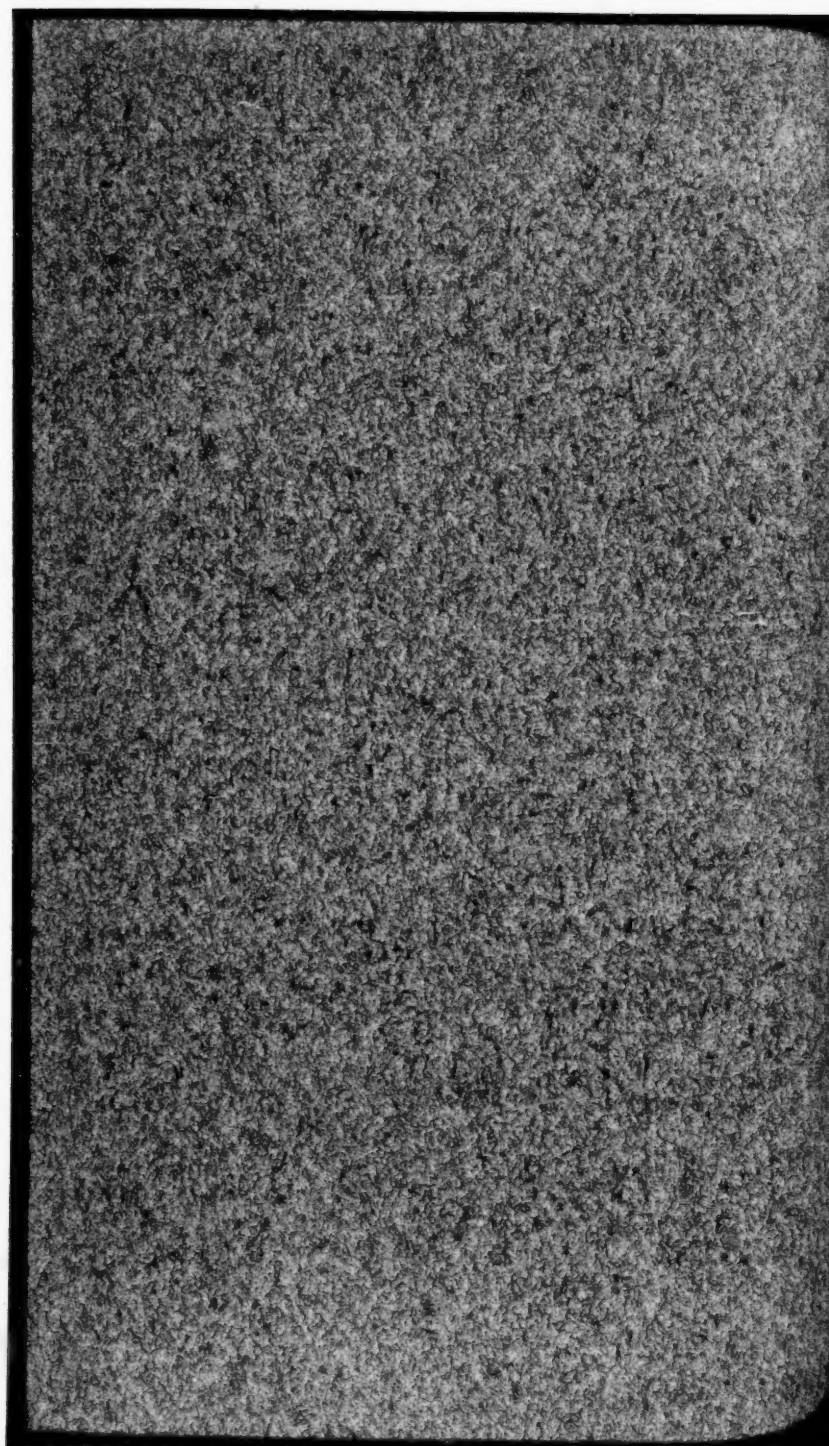
CHARLES E. WILSON and MARY WILSON
vs. THE ONTARIO LAND COMPANY

WRIT FOR HABEAS CORPUS

Respectfully Submitted,

Attorneys for Appellants

J. D. [Signature]



IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1911.

No. 160

THE ONTARIO LAND COMPANY,
Appellant,
vs.

CHARLES H. WILFONG AND MAY H. WILFONG,
HIS WIFE, AND WALTER J. REED,
Appellees.

BRIEF FOR APPELLEES.

The jurisdiction of this court is questioned by a motion heretofore filed, and, as we understand the status of the case, still pending. In this brief, which goes to the merits as well as to the jurisdiction, we will attempt to avoid, as far as possible, repetition of matter contained in the brief in support of the motion.

As the relation of the parties in this case is the same as they were in the Circuit Court, the appellant will be styled in this brief "complainant" and the appellees "defendants."

ARGUMENT.

Complainant was, in 1892, the owner of a tract of land in the City of North Yakima, marked upon the recorded plat of Capitol Addition as "Reserved." This litigation in no way involves the complainant's title except as affected by the title of defendants through the tax proceedings which are the subject of this litigation. The complainant in its bill charges that certain tax deeds of record under which defendants claim title, are void for various reasons.

Defendants' titles were acquired wholly through operation of the law of the State of Washington. It is not claimed that any law of the State through or under which defendants' titles were acquired is in conflict with the Federal Constitution or any treaty or law of the United States. The bill alleges, in effect, that the State Court in determining whether there had been a compliance with the laws relating to the foreclosure of tax liens, applied incorrect general principles of law. There is no pretense that the general principles applied by the State Court are the subject of any Federal Statute.

In 1892 the State Statutes provided:

"The assessors shall make out in the real property assessment book, in numerical order, complete lists of all lands or lots subject to taxation, showing the names of owners if to him known, and if unknown, so stated opposite each tract or lot in pencil memorandum, the number of acres and the lots or parts of lots or blocks included in each description of the property."

Sec. 45, Chap. CXL, Laws 1891, Page 297.

In the exercise of his authority it appears the assessor divided up the land indicated on the plat of Capitol Addition by the word "Reserved" into blocks and gave to them numbers in harmony with the system of numbering on the recorded plat, and general taxes were levied against the property thus described, without objection for ten years.

A. S. Congdon, a resident of North Yakima, was the authorized general agent and Secretary of the complainant with respect to said property and the complainant's property interests included its taxes. (Rec., 45.) Taxes ran delinquent until the year 1903. William B. Dudley, who was the County Treasurer from 1899 to 1903, prior to the tax foreclosures, called the direct attention of A. S. Congdon to the assessment and levy. From the testimony we quote:

"Q. What was the substance of your conversation with A. S. Congdon relative to the unpaid taxes on these blocks prior to their sale to Wilfong and Reed? * * *

A. Why, that they expected in some way to beat the taxes, I do not know how, and that was the reason they were not going to pay them.

Q. Was Congdon referring to the two blocks in question here, to-wit, 353 and 373?

A. He was." (Rec., 48-9.)

Four blocks owned by the Ontario Land Company were sold, two to Yordy, one to Wilfong and one to Reed. These blocks constituted the area marked "Reserved" on the plat.

The witness also had a conversation with the complainant's Vice-President, Chester A. Congdon, prior to the delinquent tax sale, relative to the taxes levied

against blocks designated 353 and 373, which are now in question. In that conversation the County Treasurer told C. A. Congdon that unless he paid the taxes on these blocks they would be sold. The testimony of the witness shows clearly that both the agent and the Vice-President knew the whole situation. (Rec., 48, 49 and 50.)

A. S. Congdon also told Mr. Peck, the Treasurer's Deputy, that the Company would not pay the taxes on these blocks.

"He gave me to understand that the taxes on these blocks could not be collected. * * * I gave him to understand that these blocks, together with property throughout the county, had been advertised for sale and would be put up at public auction for delinquent taxes." (Rec., 51 and 52.)

Neither of the Congdons disputed this testimony nor the fact of their familiarity with the state of the tax record. A. S. Congdon says:

"I told them practically that the payment of these taxes would not operate as a payment of the taxes on the reserved tract, nor would it prevent the re-assessment and the compelling of the Ontario Land Company to pay another tax for the reason that we claimed the land as described did not describe our property." (Rec., 53.)

How more clearly could it appear that the complainant knew that the land in the description employed by the assessor and treasurer covered the identical land indicated on the plat as the "Reserved" tract, and also that it was the intention to foreclose the tax lien under the description employed by the assessor?

On November 1st, 1902, the County Attorney, in

pursuance of his duty, initiated a proceeding in the Superior Court for the foreclosure of taxes appearing upon the Treasurer's books as delinquent more than five years, including severally the four blocks in the Capitol Addition numbered 352 and 372 and 353 and 373, according to the description and numbering on the assessor's and treasurer's rolls.

The State of Washington had substituted a judicial proceeding for the foreclosure of tax liens for the summary proceeding in use in many of the states. The judicial foreclosure provided is a proceeding strictly *in rem*, and is conducted in a court of general jurisdiction and is a civil proceeding in which the court is clothed with all the power and the record of which is entitled to all the sanctity of any civil proceeding in a court of general jurisdiction.

Taylor v. Huntington, 34 Wash., 455.

The law provides for the *initiation* of the proceeding by "*notice which shall be served exclusively by publication.*"

Sections 1 and 3 of the Laws of 1901, amending Sections 96 and 98 of the Laws of 1897, fully and completely cover the whole subject matter of what the notice of foreclosure shall contain and how it shall be served.

Section 1, amending Section 96, relates to cases where the foreclosure is of a delinquency certificate held by a private person, and is as follows:

"Sec. 96. Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of

delinquency may give notice to the owner of the property described in such certificate that he will apply to the Superior Court of the county in which such property is situated for a judgment foreclosing the lien against the property mentioned herein. Such notice shall contain—

(1) The title of the court, the description of the property and the name of the owner thereof, if known, the name of the holder of the certificate, the date thereof, and the amount for which it was issued, the year or years for the delinquent taxes for which it was issued, the amount of all taxes paid for prior or subsequent years, and the rate of interest on said amount.

(2) A direction to the owner summoning him to appear within sixty days after service of the summons, exclusive of the day of service, and defend the action or pay the amount due, and when service is made by publication a direction to the owner, summoning him to appear within sixty days after the date of the first publication, and defend the action or pay the amount due.

(3) A notice that, in case of failure so to do, the judgment will be rendered foreclosing the lien of such taxes and costs against the land and premises named.

(4) The summons shall be subscribed by the holder of the certificate of delinquency, or by some one in his behalf, and residing within the State of Washington, and upon whom all process may be served.

(5) A copy of said notice shall be delivered to the county treasurer. Thereafter when any owner of real property or person interested therein seeks to redeem as provided in Section 17 of this act, the treasurer shall ascertain the amount of costs accrued in foreclosing said certificate and include said costs as a part of the redemption required to be paid."

Session Laws of 1901, pages 384-5.

Section 3, amending original Section 98 as amended, reads as follows:

“After the expiration of five years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on said property to the county, and shall file said certificates when completed with the clerk of the court, and the treasurer shall thereupon, with such legal assistance as the county commissioners shall provide in counties having a population of thirty thousand or more, and with the assistance of the county prosecuting attorney in counties having a population of less than thirty thousand, proceed to foreclose in the name of the county, the tax liens embraced in such certificates, and the same proceedings shall be had as when held by an individual: *Provided*, That summons may be served or notice given exclusively by publication in one general notice, describing the property as the same is described on the tax rolls. Said certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against said property may be brought in one action and all persons interested in any of the property involved in said proceedings may be made co-defendants in said action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein. The names of the person or persons appearing on the treasurer’s rolls as the owner or owners of said property for the purpose of this act shall be considered and treated as the owner or owners of said property, and if upon said treasurer’s rolls it appears that the owner or owners of said property are unknown, then

said property shall be proceeded against, as belonging to an unknown owner or owners as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of said proceedings, and of any and all steps thereunder. The publication of the summons or notice required by this section shall be made by the county treasurer in the official newspaper of the county."

Session Laws 1901, pages 385-6.

The notice published conforms to all of these requirements. (Record, Caption, Page 99, Jurisdictional allegations, Page 100, Description of Property herein involved Serial No. 1851, 1852, 1912, 1913, Page 107, Summoning Paragraph, Page 108, Affidavit of Publication, Page 98.)

The proceeding does not contemplate a formal complaint or formal summons "*the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein.*" That no complaint or pleading other than the publication of notice is required, has been directly decided by the State Court in *Snohomish Land Co. v. Blood*, 40 Wash., 626, 628.

The bill does not allege, and the complainant does not contend that a case initiated in compliance with this law would violate any Federal requirement. It is conceded that the judicial machinery of the State may be properly set in motion by the notice which the law specifies shall be given. It is claimed that the notice published was not sufficient to give the court jurisdiction on account of defective description. The sufficiency or insufficiency of the notice

depends upon the solution of the question whether or not the property was described with sufficient definiteness to give notice under all the circumstances that the tax charged related to the land involved.

It is not alleged or claimed that there is any Federal code of legal principles governing the requirements of a description. The facts, therefore, must be applied under general principles of law. A question which involves merely the construction of state statutes and the application thereto of general legal principles, is not a Federal question.

Cosmopolitan Mining Co. v. Walsh, 193
U. S., 460.

In considering the jurisdictional allegations of the bill, the substance alone is to be considered. Assertions and conclusions not germane to the matter really in issue are discarded. Jurisdiction cannot be sustained by an allegation upon which the determination of the matter to be litigated does not depend. That there must be process to bring the subject matter of a litigation before the court does not appear from the bill to have been a subject of dispute or question. The facts stated in the pleadings show that there was an attempt in the foreclosure case to bring the property into court for subjection to the tax lien. It is alleged in the bill that the Supreme Court of Washington in the case of the present complainant against Yordy, involving the remaining two blocks of the area marked "Reserved," and described as Blocks 352 and 372, determined and adjudged that the description contained in the fore-

closure notice and in the county tax records was sufficient to identify the land held in possession by Yordy under his deed. It is further alleged that if the general principles of law applied by the Supreme Court of Washington in the Yordy case is a correct application of legal principles, then the tax deed to Wilfong and Reed, covering Blocks 353 and 373, is a valid title superior to the title of the complainant.

The pleader says, in substance, that the Supreme Court of Washington did not apply correct principles of general law in reaching its conclusion, and avers that for the correction of the error of the Supreme Court of Washington in the application of these principles of general law, it was at the time of filing the bill prosecuting a writ of error from this court. This court has since affirmed the Supreme Court of Washington in the Yordy case, and in doing so held that in the application of general principles of construction of descriptive matter, either in a deed or in a process, no error appears, and that the Supreme Court of Washington had correctly applied sound legal principles as measured by the rules of the common law.

Upon the issue of jurisdiction of the Circuit Court on federal grounds it is of no consequence that the affirmance in the Yordy case was subsequent to the commencement of this case. The facts alleged have in no way changed. The construction put upon those facts and the legal principles invoked existed then exactly as they do now. The matter was *res adjudicata* in a court of competent jurisdiction, and the highest court provided by any law to determine

the general legal principles applicable to real estate within the State. The complainant pleaded itself out of court except upon the ground of diversity of citizenship.

That this court will not entertain appellate jurisdiction of any cause which does not involve a question of Federal law, has been frequently decided. The Federal question may come before this court directly from the Circuit Court under the Fifth Section of the Judiciary Act of 1891 where the jurisdiction of the Circuit Court is predicated solely upon the Federal question. It may come through the Circuit Court of Appeals under the Sixth Section where the jurisdiction of the Circuit Court is predicated upon diversity of citizenship and also a Federal question. It may come from the highest court of the State having jurisdiction of the subject matter where a Federal question is involved and was raised in the State Court. But in every one of the numerous cases where this court has retained jurisdiction, a Federal question of real merit has been controlling, and in every instance where the record does not present a Federal question of real merit, the appeal or writ of error has been dismissed.

McFadden v. United States, 213 U. S., 288.

A Federal question must be involved *as controlling*. If the court has jurisdiction by reason of a real Federal question, it will dispose of the whole case and not relegate the parties to another jurisdiction for determination of incidental questions.

Cary v. Railway Co., 150 U. S., 170.

In *Loeb v. Columbia Township Trustees*, 179 U. S., 472, attention is called to the language of the Fifth Section of the Judiciary Act of 1891, giving this court jurisdiction "*in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States,*" and pointing out how this section differs from Section 709 of the Revised Statutes relating to review by this court of the final judgment of a State Court.

The language of Section 1 of the Act to Determine the jurisdiction of the Circuit Courts of the United States and Regulate Removal of Causes (18 Statutes, 470), confines the jurisdiction to causes "arising under the Constitution or Laws of the United States" and to other grounds not here material, and by Section Five of that Act

"if it shall appear to the satisfaction of said Circuit Court at any time after such suit has been brought or removed thereto that such suit does not really and substantially involve such suit or controversy properly within the jurisdiction of said Circuit Court * * * said Circuit Court shall proceed no further therein but shall dismiss the suit. * * *"

It appears that the Fifth Section was intended to guard the court against imposition either intentional or unintentional.

"By the judicial system of the United States established by Congress under power conferred upon it by the Constitution, the jurisdiction of the courts of the several States has not been controlled or interfered with except so far as necessary to secure the supremacy of the constitution, laws and treaties of the United States."

Whitten v. Tomlinson, 160 U. S., 238.

The proposition of appellant is that it has invoked the jurisdiction of the Circuit Court by alleging that the State Court committed error in applying principles of general law to the description in the foreclosure proceeding, and by reason of that error the case arises under the constitution and laws of the United States; and although this court has held there was no error in determining the jurisdiction of the Superior Court, the case may nevertheless proceed upon incidental questions of purely local character. The argument amounts simply to this, that jurisdiction of the Circuit Court may be predicated upon a *charge* that a proposition of general law on which the judgment of the State Court rests is unsound and the unsoundness of the *charge* makes no difference.

The cases cited by the appellant in its brief in opposition to our motion to dismiss, in no way hit the point. They go to the proposition that where this court has jurisdiction by the presence of a Federal question it will completely adjudicate the whole case.

Cases are also cited sustaining the proposition that where the jurisdiction of the Circuit Court is grounded in stated facts, a subsequent change of the fact will not oust the court of jurisdiction. But in this case there has been no change of facts since the bill was filed. The principles of law under which those facts were applied by the State Court in arriving at its judgment, have not changed. The only thing that has occurred is that this Court has approved those principles. It has not changed the

law. The law is as it was when the Supreme Court pronounced its judgment in the Yordy case.

The approval by this Court of Section 323, Jones on Real Property, quoted in the Yordy opinion, gave to the country no new law. It simply recognized the soundness of that which before existed and the same may be said of the approval by this Court of the opinion of Judge Crowe in the Yordy case in the Supreme Court of Washington.

It is said in the brief in opposition to our motion to dismiss for want of jurisdiction, that this Court retained jurisdiction of the writ of error in the Yordy case and by so doing necessarily decided that the writ of error charging defective description presented a Federal question. The petition for writ of error in that case averred that the land had never been described by the taxing officers and was not described in the foreclosure notice; that the land was never taxed. The question whether there could be a valid tax of real estate without in some fair manner describing the property with sufficient definiteness for identification, was involved and called to the attention of the Supreme Court of the State. This Court retained jurisdiction and looked into the record. From its examination of the record the conclusion was reached that the description was sufficient.

The Yordy case was an action in ejectment and involved directly the validity of the tax deed identical with the deeds attacked in this case except as to block numbers.

It is conceded in the brief in opposition to our motion to affirm that the decision in the Yordy case

finally disposes of the question of the sufficiency of defendants' titles under the due process clause of the 14th amendment. That concession apparently disposes of the case in this court regardless of what may be the conclusion of this court on the subject of its jurisdiction to entertain this appeal from the judgment of the Court of Appeals. If the Superior Court of the State acquired jurisdiction of this property for the purposes of foreclosing the tax lien, every other question is foreclosed by the judgment of that court and by the legal effect of the Treasurer's deed. The Superior Court having in its grasp the subject-matter, the proceeding being strictly *in rem.*, had full power over the case and its disposition of every question involved is final and conclusive. As has been noted, the law of Washington has constituted the Superior Court a court of record and of general jurisdiction, and the statutes have conferred upon that court authority to foreclose tax liens. Its judgment is not subject to collateral attack except upon the ground of jurisdiction. If competent jurisdictional matter is stated in the process initiating the cause so as to invoke judicial action, the judgment is conclusive as to all incidental questions. Whether the facts are sufficient to sustain jurisdiction once acquired is judicial action and can no more be questioned collaterally than any other element of a judgment.

The fact that the procedure is aided by and conducted under forms provided by statute, does not change the rule.

"There is, however, one principle underlying all these various classes of cases which may be

relied on to carry us through them all when we can be sure of its application. It is, that whenever it appears that a court possessing judicial powers has rightfully obtained jurisdiction in a cause, all its subsequent proceedings are valid, however erroneous they may be, until they are reversed on error, or set aside by some direct proceeding for that purpose. The only difficulty in applying the rule, is to ascertain the question of jurisdiction."

Harvey v. Tyler, 2 Wall., 328, 342.

Huling v. Kaw Valley Ry., 130 U. S., 559, relates to a judgment of condemnation under eminent domain statutes initiated by published notice against a non-resident landowner, and applies the same principle.

"The judgment is conclusive not only as to the matter actually litigated but as to every other matter involved."

Kromer v. Friday, 10 Wash., 621, 640.

Unless contradicted by the record the recitals of the judgment are conclusive and it is presumed that the court examined into the facts necessary for the determination of every question involved.

"The provisions of the law do not prescribe what shall be deemed evidence that such acts have been done, or direct that their performance shall appear upon the record."

Voorhees v. Bank of U. S., 10 Peters, 449.

Applegate v. Mining Co., 117 U. S., 255.

There is no exception to this rule where the proceedings are *in rem*. and the judgment is rendered by a court of record and of general jurisdiction.

Mr. Justice Field has pointed out a qualified ex-

ception to the general rule applicable to collateral attack where the judgment is personal and rendered against a non-resident of the jurisdiction on substituted service. The exception is not applicable to the present controversy and was not necessary to the question before the court in the case in which the opinion was rendered.

Galpin v. Page, 18 Wallace, 350, 371.

The Superior Court on application for the judgment found "*upon proofs adduced*" that:

"Plaintiff herein has *good and lawful lien* against each and every tract, piece and parcel of land hereinafter described, for the amount set opposite thereto. *That summons and notice has been duly served in this proceeding as required by the statutes of this State and such statutes complied with in all respects pertaining thereto.* * * *"

The Treasurer is then directed to proceed to sell according to law. The Statute requires:—

"The Court shall examine each application for judgment of forfeiture (foreclosure) and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, *without other pleadings* and shall pronounce judgment as the right of the case may be; * * * said order shall be signed by the judge of such Superior Court and attested by the clerk thereof, and a certified copy of said order, together with a certified list of the property therein ordered sold, shall be served upon the County Treasurer, and the said service shall be full and sufficient authority for him to proceed to execute a deed to said prop-

erty for said sums set forth in said order, and to take such further steps in the matter as are provided by law. In all judicial proceedings of any kind for the collection of taxes, assessments and the penalties, interest and costs therein, all amendments may be made which by law can be made in any personal action pending in such court and *no assessments of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment roll, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or any other name than that of the original owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax, or the assessment thereof, and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any officer or officers connected with the assessment or levy of such taxes, may be in the discretion of the court, corrected, supplied and made to conform to law by the court.* * * *"

Section 103, Sessions Laws 1897, pages 184-5-6.

The deed is made *prima facie* evidence of every fact connected with the legality of the proceeding.

Section 114, relating to *prima facie* effect of deeds is set forth in full on pages 8 of the brief in support of the motion to dismiss.

Ward v. Huggins, 7 Wash., 617, at page 620-1:

“After the appellant had introduced his evidence and rested his case, the respondent offered in evidence the deed from the county treasurer of Pierce County, under which he claims title to the land. The court admitted the deed in evidence, over the objection of the plaintiff, without requiring the defendant to first show the regularity of the tax proceedings under which the deed was issued. In so doing, the appellant claims, the court committed error. And that would be true were it not for the provision of the statute under which the deed was issued, which declares that such deeds shall be presumptive evidence of the regularity of all former proceedings. Laws 1875, p. 72, Sec. 41. The evident design of the statute was to obviate the necessity, on the part of the grantee, of making preliminary proof of prior proceedings. Any other construction of the statute would render it meaningless and useless. The common law rule, which cast upon the claimant under a tax title the burden of proving that every successive step in the tax proceedings required by statute had been taken, was found to work disadvantageously to purchasers at tax sales. And the difficulty of proving every step in a long course of proceedings with unvarying certainty, and the strong probability that some irregularity or slight omission in the proceedings could be found to defeat the title, had a strong tendency not only to deter persons from purchasing at such sales, but to make owners of property negligent in the payment of their taxes. A tax title was proverbially no title, and tax sales, though sanctioned by law, were little less than farcical. To remedy this undesirable state of affairs the legislatures of the various states have enacted statutes making tax deeds *prima facie* or presumptive, proof of the regularity and legality of the preliminary proceedings, as well as of the

deed itself, thus casting the burden of proof upon him who asserts the invalidity of the conveyance. And where such a statute exists the tax deed is competent evidence in behalf of the claimant, and its rejection, if offered as evidence of title, is ground for reversal of the judgment. *Black on Tax Titles*, Sec. 251. It follows, therefore, that the respondent's deed was properly admitted in evidence."

Ward v. O. & W. R. R. Co., 176 Fed., 336.

This was an action for determination of conflicting claims to certain real estate in Pierce County, Washington. Complainants alleging their ownership by virtue of two tax deeds executed by the county treasurer. Defendants put in issue the alleged title of complainants alleging that no certificate of delinquency was ever signed, executed, issued or filed in the office of the clerk of the Superior Court. That no valid service by publication or otherwise was had.

"The complainants, to prove their claim of title, introduced in evidence the two tax deeds, but not the judgment or order of sale pursuant to which the sale was made. In giving judgment for the defendants the court below held, in effect, that the deeds constituted no evidence of any judgment or order of sale, and, consequently, that the burden rested upon the complainants to otherwise prove the validity of such judgment and order. In the absence of a statute regulating the effect of tax proceedings, that would undoubtedly be the correct rule; but there are statutory provisions in the State of Washington upon the subject, which, as construed by the Supreme Court of the State, would seem to hold that a tax deed is at least *prima facie* evidence, not only of the validity of the deed and

order under which the sale is made, but also of the regularity of all former proceedings. See Laws Wash. 1899, p. 299, Sec. 18; Laws Wash. 1897, p. 190, Sec. 114; Laws Wash. 1875, p. 72, Sec. 41; *Ward v. Huggins*, 7 Wash., 620, 32 Pac., 740, 1015, 36 Pac., 285; *Rowland v. Eskeland*, 40 Wash., 253, 82 Pac., 599; *Miller v. Henderson*, 50 Wash., 200, 96 Pac., 1052; *Carson v. Titlow*, 38 Wash., 196, 80 Pac., 299. See, also, *Ontario Land Company v. Yordy*, 212 U. S., 152, 29 Sup. Ct., 278, 53 L. Ed., 449; *Wilfong v. Ontario Land Company*, 171 Fed., 51, 96 C. C. A., 293."

The judgment is reversed, and the cause is remanded to the court below for a new trial.

It was contended in the Circuit Court that the filing of a certificate of delinquency by the County Treasurer in the clerk's office was jurisdictional. The Supreme Court of Washington has disposed of that contention in *Miller v. Henderson*, 50 Wash., 200-3. It would seem that the statutes above referred to would be sufficient to dispose of the matter without judicial decision.

It was also contended in the Circuit Court that the notice of foreclosure by means of which the proceeding was initiated, could not be published until some form of complaint was filed in the clerk's office and consequently there was no authority or power to publish notice. The statute which we have quoted providing for the initiation of a tax foreclosure by published notice disposes of that contention. Moreover, it is not to be presumed that the statute requires any unnecessary act or makes any act not necessary to the proceeding jurisdictional. This contention of the appellant is clearly disposed

of by the decision of the State Court in *Snohomish Land Co. v. Blood*, to which reference has been made.

Appellant in its brief, on page 26, claims that the words "60 days after first publication" are not equivalent to the words "within 60 days after the date of the first publication."

If this very technical proposition had any merit it is disposed of by the language of the summons itself, which reads:—

"And you are hereby summoned to appear within 60 days after the first publication of this summons exclusive of the first publication, to wit, within 60 days after the first of November, 1901, and defend, etc."

The case of *Woodman v. Anderson*, 32 Wash., 500, simply holds that a summons under the law of 1897 which provides that the owner shall appear and answer within 60 days after the "service of summons," makes the answer day 60 days after the service is completed and not after the first publication as provided in the Act of 1901.

In the case of *Thompson v. Robbins*, 32 Wash., 149, it was held that a service under the Revenue Act of 1897, was not good after the law of 1901 went into effect; that the service was governed by the law in force at the time of the commencement of the action.

The bill calls attention to a paper in the judgment roll entitled "Summons for Publication for Foreclosure of Tax Lien." There is no explanation of how this paper got on file, but its existence is wholly im-

material, for the reason that the notice which was published and made part of the judgment roll, does contain a description of the property. (Rec., 107, No. 1852, 1913.)

The appellant urged in the Court of Appeals, and now urges in this Court, that this Court did not hold in the Yordy case (112 U. S., 252) that the description in the deed was sufficient to identify the land. While it is conceded that the description in the notice sufficiently identifies the land to satisfy the requirements of the 14th amendment, it is urged that a deed requires greater certainty and particularity. The opinion in the Yordy case, in connection with the authorities cited, does not bear out the contention of the appellant. The opinion follows the reasoning of the opinion in the State Supreme Court and quotes and approves the same authorities. The judgment of the Court affirming the judgment of the State Court confirming and quieting Yordy's title, shows approval of the tax deed as a conveyance. The Code of Washington provides that the title of either party may be tried and confirmed in ejectment. The judgment quieting Yordy's title could not have passed if the deed was void. This point was called to the Court's attention by the writ and in argument.

Our position before this Court is that the appeal should be dismissed and that the judgment of the Court of Appeals be held final. But if the Court shall entertain jurisdiction then the judgment of the Circuit Court of Appeals should be affirmed, because it is in harmony with the previous decision in this

Court and with the decisions of the Supreme Court of the State of Washington, and correct principles of general law.

Respectfully submitted,

BENJAMIN S. GROSSCUP,

IRA P. ENGLEHART,
Of Counsel.

Office Supreme Court, U. S.
FILED.

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JAMES H. MCKENNEY,
CLERK.

No. 160

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

THE ONTARIO LAND COMPANY, APPELLANT,

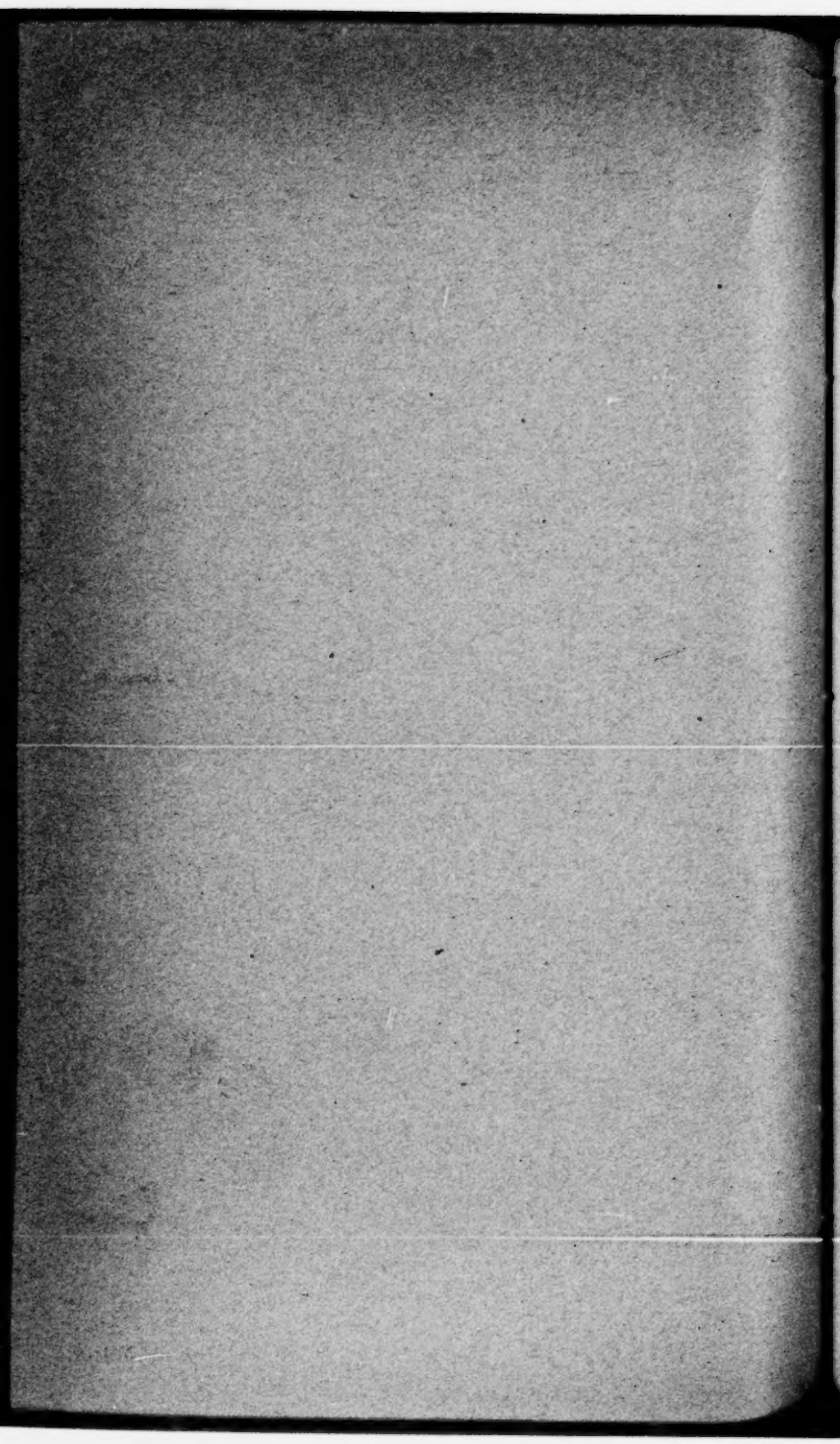
VS.

CHARLES H. WILFONG AND MAY A. WILFONG, HIS
WIFE, AND WALTER J. REED.

Appellees.

MOTION TO DISMISS APPEAL.
Under Rule Six.

BENJAMIN S. GROSSCUP,
Counsel for Appellees.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

THE ONTARIO LAND COMPANY, APPELLANT,

vs.

CHARLES H. WILFONG AND MAY A. WILFONG, HIS
WIFE, AND WALTER J. REED.

Appellees.

MOTION TO DISMISS APPEAL.

Under Rule Six.

Now comes Charles H. Wilfong and May A. Wilfong, his wife, and Lydia MacMillan Reed, Executrix of the Will of Walter J. Reed, Deceased, substituted for Walter J. Reed, Appellees, and all move the Court to dismiss the appeal now pending in this Court from the Judgment of the Circuit Court of Appeals, Ninth Circuit.

As ground for this motion, the appellees respectfully show, that this Court is without jurisdiction to entertain said appeal for the reasons:

1. That jurisdiction of the Circuit Court of Appeals, when said cause was decided, depended solely upon diverse citizenship of the parties.

2. The judgment and decision of the Circuit Court of Appeals, is based wholly upon questions of State and general law, and not upon any question of a Federal nature.

3. The only question of a Federal nature involved at the time said cause was decided in the Circuit Court of the United States, was determined and decided by this Court, in an action

involving the same questions of law, and the same facts while said cause was pending on appeal in the Circuit Court of Appeals, thereby removing from the consideration of the Circuit Court of Appeals, any substantial Federal question.

In the alternative the appellees move to affirm, on the ground that although the record may show, that this Court has jurisdiction, it is manifest the appeal was taken for delay only, and that the question on which the jurisdiction depends, is so frivolous as not to need further argument. Accompanying this motion is filed herewith a brief statement of the case.

BENJAMIN S. GROSSCUP,
Counsel for Appellees.

NOTICE OF MOTION.

To Mr. A. L. Agatin, Duluth, Minnesota, Solicitor for Appellant:

Please take notice, that the foregoing annexed motion to dismiss the appeal pending in the Supreme Court of the United States, in the case of Ontario Land Company, Appellant, vs. Charles H. Wilfong and May A. Wilfong, his wife, and Walter J. Reed, Appellees, being Docket Number 160, will be submitted to the Supreme Court of the United States, on Monday, the 27th day of November, A. D. 1911, at twelve o'clock noon, in accordance with the rules of said Court. The accompanying brief will be filed in support of said motion.

BENJAMIN S. GROSSCUP,
Counsel for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL.

The case is pending in this Court on appeal from the Circuit Court of Appeals, Ninth Circuit, for the reversal of a judgment upholding certain tax titles, rendered on appeal from the Circuit Court, Eastern District of Washington. The Bill in the Circuit Court was an attack upon a judgment of the Superior Court of Washington, foreclosing a tax lien under which the defendants (who are appellants in this Court) secured deeds to parcels of land in the City of North Yakima, Washington.

The Bill in substance alleges ownership of vacant land designated on the plat of Capitol Addition to North Yakima, "Reserved." On a plat filed by complainant (subsequent to defendants' tax deeds) this reserved area is designated Blocks 1, 2, 3 and 4, Heerman's Addition. A plat of Capitol

Addition is incorporated in the Bill. (Record, opposite Page 16.)

On the County tax rolls, the tract was entered by the assessing and collection officers, as Blocks 352, 353, 372 and 373, Capital Addition. The tax thus assessed against each block became delinquent beginning for the year 1892-3. (Record, page 3.)

The evidence without conflict shows full knowledge, both of the manner of assessment and amount of delinquency and before the sale for taxes, refusal to pay because of claimed irregularity of the taxing officers. (Testimony of Dudley, Record, page 48; Peck, Record, page 50.) In 1901 the County officers began a delinquent tax foreclosure in the State Court, including the land in litigation with several hundred other pieces. The foreclosure was initiated by a summons and published notice, and culminated in a judgment sale and deeds to purchasers. Defendant Walter J. Reed acquired tax deed to Block 373, and defendant Charles H. Wilfong acquired tax deed to Block 353, according to the description on the tax rolls. Under the same judgment and at the same time, Jay E. Yordy purchased Blocks 352 and 372, the four blocks constituting the entire area marked "Reserved" on the recorded plat of Capitol Addition. These tax deeds were all recorded.

The Bill challenges their validity on the grounds that:

1. The description on the tax rolls and followed throughout the tax foreclosure in the State Court, is not sufficient to identify the property. (Bill, Secs. 14-20; Record, pp. 4-6.)

2. The summons in the foreclosure proceeding fails to conform to the requirements of the State Statute. (Bill, Sec. 22.)

3. The service of the summons was by publication. (Bill, Sec. 25.)

4. The complaint in the foreclosure case was not filed with the clerk of the Court, until the day of the entry of the judgment, several months after the return day of the summons. (Bill, Secs. 23-24.)

5. No certificate of delinquency was filed in Court prior to the day of entering judgment. (Bill, Sec. 24.)

6. No notice of sale was given or posted as required by law. (Bill, Sec. 25.)

The Circuit Court of Appeals determined each of these issues in favor of the defendants (who were appellants in that Court), and remanded the case with an order to dismiss the Bill. That judgment is final unless it deprives the plain-

tiff in error of some right protected by the Federal Constitution. (No Federal Statute or treaty is invoked.)

The only ground for this appeal, is the claim that the appellant has been deprived by the State Court in the original foreclosure proceeding and by the Circuit Court of Appeals in this proceeding, of the right to contest the validity of the tax assessed against its property.

The identical facts presented by this appeal were before this Court in *Ontario Land Company vs. Yordy*, 212 U. S. 152.

"It is established that to give this Court jurisdiction on a direct appeal from or writ of error to a Circuit Court on the ground of a Constitutional question, such question must be real and substantial and not a mere claim in words."

Kauffman vs. Smith, 216 U. S. 610.

The same rule applies to an appeal from the Circuit Court of Appeals.

Farrell vs. O'Brien, 199 U. S. 89-100.

This Court will not retain jurisdiction if prior decisions have removed the question from controversy.

McGivra vs. Ross, 215 U. S. 70.

Bird vs. Ashton, 220 U. S. 604.

The Yordy case involved the same foreclosure and sale and form of description, the only difference being that Yordy's title covered the north half of the tract designated on the tax rolls, Blocks 252 and 272, while the present case involves the south half of the tract designated Blocks 253 and 273. The judgment roll in the State Court, and the evidence is the same in both cases. Yordy's case came up through a different channel, but the point decided, whether the description was sufficient on which to base a tax and in the foreclosure to give notice of the proceeding, is the same point on which the right to prosecute this appeal is claimed. That case was fully argued by counsel on this record. The sufficiency of the description, is no longer an open question.

Under the established practice as announced in the McGivra case and followed in the Bird case, jurisdiction of the Federal Court in this case, depends wholly upon diversity of citizenship, because the only Federal question has been deprived of all merit, by the decision of the precise point both in law and fact.

It was conceded in the Court of Appeals, that all the issues, except sufficiency of description, are not of a Federal nature.

No Court procedure at all, much less any form of procedure to ripen a tax lien into a title, is required by the due

process clause of the Constitution.

McMillen vs. Anderson, 95 U. S. 37.

The States are free to provide their own procedure and determine every question arising out of that procedure, subject to the single Federal requirement, that opportunity shall be open at some point between the levying of the tax and the ripening of the lien into a title to contest the validity of the tax.

Ballard vs. Hunter, 204 U. S. 241.

Washington has provided two methods for such contest: One is by injunction, which will lie from the day the tax is entered on the books.

Andrews vs. King County, 1 Wash. 46.

The other is by defense in the statutory foreclosure.

The provision for the filing of a certificate of delinquency by the County Treasurer in the Clerk's office, is directory, not jurisdictional. It is essential neither to the rights of the land owners, nor to the legality of the Statute, and the omission to file the same, does not subject the judgment and title to collateral attack.

Miller vs. Henderson, 50 Wash. 200-3.

Equally without merit is the claim, that the tax titles are defective because the complaint in the foreclosure case, was not filed before the day judgment was entered. A total omission to file the complaint would not make the judgment void.

"Since an action can be commenced without the filing of a complaint, it may proceed to judgment without such filing, and a judgment entered thereon is not void however erroneous it may be."

Snohomish Land Co. vs. Blood, 40 Wash. 626-8.

The summons in the foreclosure case has no jurisdictional defect. The Bill apparently charges, that the description of the property does not correspond with the description on the tax rolls, but this error of the pleader is apparent from an examination of the judgment roll, which contains the published summons. (Record, p. 107, Tract 1852, 1913):

1852	Capitol Addition North Yakima,	
	All of Block 353, 1892-3	
	Unknown owner	\$45.37.
1913	Capitol Addition North Yakima,	
	All of Block 373, 1892-3	
	Unknown owner	\$45.37."

The Statute provides:

"That summons may be served or notice given *exclusively by publication* in one general notice describing the property, as the same is described on the tax rolls. * * * The names of the person or persons appearing on the treasurer's rolls as the owner or owners of said property for the purpose of this act shall be considered and treated as the owner or owners of said property, and if upon said treasurer's rolls it appears that the owner or owners of said property are unknown, then said property shall be proceeded against as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have any interest therein, are hereby required to take notice of said proceedings and of any and all steps thereunder."

Laws 1901, Sec. 3, pp. 385-6.

Section 97, Act of 1897, p. 182, provides that service of summons shall be as in civil cases, which is by six weeks' publication. The affidavit shows compliance. (Record, p. 98.)

In ordinary civil cases where constructive service is provided when actual service is not possible, an affidavit showing necessity for publication is required. Such an affidavit manifestly has no place in a tax foreclosure where the Statute provides for notice *exclusively by publication*.

The publication of notice of sale was not put in evidence, but as there is no evidence that notice was *not* legally given, the deeds to the purchasers are sufficient evidence of that fact, and all other facts going to the regularity of the proceeding.

"Deeds executed by the County Treasurer, as aforesaid, shall be *prima facie* evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the real estate thereby conveyed of the following facts: First, that the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; second, that the taxes or assessments were not paid at any time before the issuance of deed; third, that the real estate conveyed had not been redeemed from the sale at the date of the deed; fourth, that the real estate was sold for taxes, assessments, penalties and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; sixth, that the sale was conducted in the manner required by law. And any judgment for the deed to real estate sold for delinquent taxes rendered after the

passage of this act, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the Court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or assessments have been paid, or the real estate was not liable to the tax or assessment."

Laws of 1897, Sec. 114, pp. 190-91.

Appellant has had its day in Court, both State and Federal. This highest tribunal has decided the only Federal question against its contention. The State Supreme Court and the Court of Appeals have decided every other question against its contention. The appellees submit, that under the established practice, they ought not to be put to further delay and expense.

Respectfully submitted,

BENJAMIN S. GROSSCUP,

Counsel for Appellees.

**SUPREME COURT
OF THE UNITED STATES.**

OCTOBER TERM, A. D. 1911

NO. 160

ONTARIO LAND COMPANY,	}
APPELLANT	

VS.

CHARLES H. WILFONG, ET AL,	}
APPELLEES	

**BRIEF FOR APPELLANT ON MOTION,
TO DISMISS OR AFFIRM.**

STATEMENT OF THE CASE.

This appeal is from a judgment and decree of the Circuit Court of Appeals for Ninth Circuit, reversing a decree of the Circuit Court for the Eastern District of Washington, in favor of the Appellant. The suit was brought for the purpose of cancelling and setting aside, as a cloud on appellant's title, certain tax deeds issued by the County Treasurer of Yakima County, to the Appellees, under which the latter claimed title in fee to the property described in the Bill of Complaint,

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adversely to the regularly derived title of Appellant.

The Bill of Complaint duly alleged diversity of citizenship, jurisdictional value, fee ownership of the lands in the Appellant, and set out in detail the several defects in the tax titles which were alleged to render said tax titles void, and also, expressly alleged that, because of the lack of description of the property, attempted to be sold for the taxes, to give the force and effect to the tax judgment and deeds contended for by appellees, would be to deprive the appellant of its property without due process of law, in violation of the 14th amendment of the Federal Constitution, and appellant by proper averment in the bill, expressly relied for protection as against defendants asserted claim of title, upon that clause of the 14th amendment, which provides that "No state shall deprive any person of his property without due process of law." (See Sec. 15 to 19 of Bill of Complaint, pp. 4-6 Record). It thus clearly appears that the Jurisdiction of the Circuit Court was invoked upon two distinct grounds:

1. Diversity of Citizenship. (See Bill pp. 1-2 Record).

2. That to hold the tax foreclosure judgment and deeds valid, would be to deprive the appellant of its property without due process of law, for the

various reasons assigned in the bill (pp. 4-6 Record).

In substance, these allegations of federal character, were, that in the tax proceedings our property was not in any way described, and that consequently we had no notice nor opportunity to be heard, which was contrary to "due process" guaranteed by the 14th Amendment. This bill was filed on January 10th, 1907, (p. 1. of Record), and long before the case of *Ontario Land Company vs. Yordy*, 212 U. S., 152, was decided. The Circuit Court decided the suit in favor of the appellant, holding the tax proceedings void upon several grounds, among others, because the property was nowhere described, or identified, and tax proceedings did not constitute due process (see pp. 127-130 Record). (162 Fed. Rep. 999). Thereupon appellees appealed to Circuit Court of Appeals, and after the case was there argued and submitted (Oct. 12th, 1908, p. 148 Record), but before the Court of Appeals rendered its decision, this Court had decided in the case of *Ontario Land Co. vs. Yordy*, 212 U. S., 152, that under the facts of the case, it could not hold that appellant was deprived of its property without due process of law. The Yordy case was decided in February, 1909, and thereafter, and on May, 1909, the Court of Appeals filed its decision in this case, reversing the decree of Circuit Court, with instructions to

dismiss the bill, upon the grounds that the decision of the Yordy case was decisive of the sufficiency of description of the property, and that other defects in the tax proceedings claimed to render them void were not sufficient to avoid the tax title (p. 149-154 Record).

Thereupon the appeal was duly taken from the Judgment of the Circuit Court of Appeals to this Court, which appellee now moves to dismiss for want of jurisdiction.

ARGUMENT OF MOTION TO DISMISS.

The right of appeal to this Court from the Court of Appeals in this case is governed solely by the Judiciary Act of March 3, 1891, Sec. 6, which reads as follows:

“Sec. 6. That the Circuit Courts of Appeals established by this Act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the District Court and the existing Circuit Courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeal *shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different states*; also in all cases arising under the

patent laws, under the revenue laws, and under the criminal laws and in admiralty cases, excepting that in every such subject within its appellate jurisdiction the Circuit Court of Appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that Court for its proper decision. * * * * *

In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment or decree sought to be reviewed."

The motion to dismiss is based upon that clause of the statute, which we have italicized in the above quotation; the claim being that the jurisdiction of the Circuit Court was, within the meaning of that clause, "dependent entirely" upon the diverse citizenship of the parties. That until after the decision of this Court in the Yordy case (212 U. S., 152) the question raised by our bill in this case, whether the Washington tax proceeding amounted to due process against complainant's land, was a question of real substance, and not trivial or absurd, must be deemed to have been settled by this Court, when it entertained and passed upon the merits of the Yordy case, after the

making an elaborate argument of the motion to dismiss, which as the record will show, was made in this Court in that case, upon the ground that no federal question was presented. Upon that subject no further argument seems called for. We understand the present contention of Appellee, to be not that the federal question raised by our bill of complaint was, when so raised, unreal, unsubstantial or without color of merit, but that, it became so when some twenty months afterwards, the Yordy case was decided by this Court. The motion proceeds upon the theory, that at our hearing the jurisdiction of the Circuit Court depended upon the conditions *then* existing, rather than upon those presented by the bill and actually existing when it was filed; that from the time when the federal question raised by our bill was by the Yordy decision, stripped of its color of merit, it ceased to be a factor in the Court's jurisdiction. But, in point of principle, the law is settled to the contrary.

Many attempts have been made to induce this Court to gauge the Circuit Court's jurisdiction by the conditions and issues existing at the time of the hearing, rather than by reference to the allegations of the bill or declaration, and the conditions existing when it was filed, but never with success.

Colorado Central Mining Co. vs. Turck, 150

U. S., 138; *Press Publishing Co. vs. Monroe*, 164 U. S., 105, 112; *American Sugar Refining Co. vs. New Orleans*, 181 U. S., 277; *Arkansas vs. Kansas & Texas Coal Co.* 183 U. S., 185; *Hugueley Co. vs. Galeton & Co.*, 184 U. S., 290, 294; *McFadden vs. U. S.*, 213 U. S. 288, 294.

In each of the above cases it was held that in the Act of Congress above quoted, the reference in the italicized clause is to the jurisdiction of the Circuit Court, and to that jurisdiction "as originally invoked." The attempt made in each case to use for jurisdictional purposes, federal questions legitimately introduced into the case by pleadings subsequent to the bill of declaration, was overruled, upon the principle that the grounds of jurisdiction are unalterably fixed by the bill. That it is by inspection of the bill, and by conditions existing at its filing, that the jurisdiction is determinable, is in the nature of a maxim.

Florida vs. Bell, 176 U. S., 321, 325.

The principle of the foregoing cases is the essential stability of the jurisdictional status as determined by the bill or declaration and by the conditions subsisting at the commencement of the action. And for the same reason that jurisdiction cannot, by subsequent developments, be reinforced, or supplied if originally wanting, it cannot, generally speaking, if once existing, be undermined by

the subsequent lapsing of the conditions that called it into being. Once effectively invoked, it ceases to be dependent upon the continuance of such conditions. The principle of stability works both ways: excluding the introduction of new grounds of jurisdiction and ignoring the cessation of old ones.

Hence it is, that federal jurisdiction, once vested on ground of diverse citizenship, is not divested by any change of domicile.

Morgan vs. Morgan, 2 Wheat, 290,
305.

Nor is it affected by the transfer, *pendente lite*, of Plaintiff's Claim to one not qualified in point of citizenship, to have brought the action.

Glover vs. Shepperd, 21 Fed. 482.

Nor by any *pendente lite* change of territorial jurisdictions.

Culver vs. Woodruff, 5 Dillon, 394.

Nor by the joinder in a creditor's bill, of new creditors of incompatible citizenship.

Stewart vs. Dunham, 115 U. S. 61.

Nor by the coming in to the defense of an action of ejectment, of a landlord of the same citizenship as the Plaintiff.

Hardenberg vs. Ray, 151 U. S., 112.

Nor by the succession to the defence, of an administration of the same citizenship with Plaintiff.

Hatfield vs. Bushnell, 1 Blatch, 395.

Nor by the naturalization *pendente lite* of an Indian indicted in a federal court, whose jurisdiction was based upon his membership of an Indian tribe.

Ex parte Kyle 67, ed. 309.

It was by an express application of the same principle, that in *Kanouse vs. Martin*, 15 How., 198-208, it was held that where the federal jurisdiction had once vested by the filing in a state court of removal papers, the Plaintiff could not even before the actual transfer of the case, undermine the jurisdiction by reducing his claim to less than the federal jurisdictional amount. It was there said by Curtis J., speaking for the Court:

“Without any positive provision of any act of Congress to that effect, it has long been established that when the jurisdiction of a Court of the United States has once attached, no subsequent change in the condition of the parties could oust it.”

The jurisdiction in the case at bar having been originally invoked upon two grounds, diverse citizenship, and a question federal in character, with color of merit, it is obvious that no reason whatever can be assigned, why the latter ground should not as well survive a *pendente lite* loss of color, as the former does a *pendente lite* loss of diversity.

It only remains to review the cases cited by appellee in support of the motion.

In *McGilvra vs. Ross*, 215 U. S., 70, the Court held that the federal question presented by the Bill in the Circuit Court was no longer open to discussion *at the time* its jurisdiction was invoked, and therefore the Circuit Court was wholly without jurisdiction to hear and determine the case. The same reasons for refusing to appeal were given in *Kauffman vs. Smith*, 216 U. S., 610, and *Bird vs. Ashton*.

In *Farrell vs. O'Brien*, 199 U. S., 89, the appeal was denied, for the obvious reason that the assertion of the federal question in the bill was wholly subordinate to the determination of the existence of an alleged Will and probate thereof, a question over which the Circuit Court had no jurisdiction. In other words, it was clearly a case where the assertion of federal question was a mere claim of words, "devoid of all reasonable foundation."

It is thus made clear, by the cases cited in support of the motion that the reason for denying appeal in each case was because the "Jurisdiction of the Circuit Court, *as originally invoked*, was not in fact invoked on federal grounds, nor upon any grounds, which by Sec. 6 would authorize an appeal from the Court of Appeals to this Court." This is not such a case. Counsel's argument, if we understand him correctly, seems to be, that since by the Yordy decision, the federal question in this

case has been deprived of merit, there is nothing for this Court to review, and the appeal should be dismissed. But if our appeal is well taken, it is well settled that the jurisdiction of this Court is not limited to the constitutional question, but includes the whole case.

Penn. Mutual Life vs. Austin, 168 U. S. 685.

Whitten vs. Tomlinson, 160 U. S. 231.

Loeb vs. Columbia, 179 U. S., 472-481.

Union Pac. vs. Harris, 158 U. S. 327.

II.

ARGUMENT ON MOTION TO AFFIRM.

The alternative motion to affirm is based upon the propositions made by Counsel:

(A.) That the jurisdiction of this Court to review is dependent upon the federal question, which has been eliminated from controversy by the Yordy decision, and that therefore there is nothing left for review.

(B.) That if the whole case is reviewable, all other questions are foreclosed by the decisions of the State Court and the Court of Appeals and are so devoid of merit as to justify affirmance, without argument.

The first proposition does not call for further discussion, since if the appeal is well taken, as of right, the whole case is properly reviewable here, (even though the Federal question has been eliminated) as has been shown by the argument on motion to dismiss.

As to whether all other questions have been foreclosed by the former decisions, depends of course upon the character of these decisions and calls for discussion of their bearing upon this case.

With reference to this question of sufficiency of description, counsel's contention is that it is entirely eliminated by the former decision of this Court (212 U. S., 152) and the State Court (44 Wash., 239), and is no longer an open question. The Court of Appeals was of the opinion, as stated in its decision, speaking of the Yordy case, (212 U. S., 152), "that that decision eliminates the question of defective description from the case before us."

In this assumption, we believe both the Court of Appeals and learned counsel for appellee are mistaken, as will be seen from a consideration of the decisions.

Although the *Yordy* case, (212 U. S. 152) involved the same tax judgment and sale that are here in litigation, and there were the defects in land description, identical with those here com-

plained of, the case went off upon the holding of this Court, that the federal question upon which its jurisdiction **had been invoked**, had been well decided by the State Court, whose judgment had, by writ of error, been **brought up for review**. That federal question was, whether if the property of the plaintiff there had been taken by the tax proceedings, it had been taken **without due process of law** because the property was nowhere so described as to charge Plaintiff with notice. No matter affecting the validity or force of the tax proceeding was of any materiality to that question, unless it was of such a character as to attest the presence or absence of due process within the meaning of the 14th amendment. The only point adjudged by the case is, that where a land owner for whose hearing in a tax proceeding due provision has been made by law, is shown to have had actual and seasonable knowledge of the particular description under which his land had been **assessed and was being proceeded against**, **no error or legal inadequacy** in such description can be said to have deprived him of his opportunity to be heard, within the meaning of the due process clause.

Proceedings for the collection of taxes have immemorially assumed so summary a character, and so endless a variety of methods and forms, both executive and judicial, that great difficulty has been experienced in finding anything in such a

proceeding, which if adopted by a state in the exercise of its discretion, can be judicially banned as not due process. About the only aid or comfort any tax payer has been able to extract from the due process clause, in its application to such proceedings, is that he cannot be denied an opportunity to be heard at some time or in some way, in opposition to an *ad valorem* tax.

Security, etc. Co. vs. City of Lexington, 203 U. S., 323;

Turpin vs. Lemon, 187 U. S., 57, 58.

The plaintiff in the Yordy case, in contending that a hearing had been unconstitutionally denied, was of course obliged to concede, that in its discretion the State might, upon penalty of forfeiture, have required it to insert upon the tax rolls a description of its own land; (*King vs. Mullins*, 171 U. S., 404), or might have provided for no other notice of hearing than the fixation by statute of a time and place for it; (*Kentucky Ry. Tax Cases*, 115 U. S., 321, 332; *Pittsburg & c R. R. vs. Backus* at p. 426), or might have dispensed entirely with the judicial features of the tax proceedings; all the requisites of due process being as satisfiable by a procedure purely executive; (*Murray's Lessee vs. Hoboken Co.* 18 How. 272) that even a right to enjoin the collection of the tax by suit in Equity, constitutes a sufficient opportunity to be heard; (*McMillan vs. Anderson*, 95 U. S., 37 and 203 U.

S. 323, 333), and that no features of the Washington proceeding became essential to due process in the constitutional sense, merely because made jurisdictionally vital by the State law; since the requisites of due process are determined always by certain fundamental and universal principles of justice, and never by the direct force of a particular statute. (*Hagar vs. Reclamation District*, 111 U. S. 701, 708).

The ground upon which the plaintiff in the Yordy case nevertheless contended that the tax proceeding fell short of due process was, that the State, having in order to reap a harvest of conclusive presumptions against the property holder, elected to make a valid tax judgment a condition precedent to the divestment of title by a tax sale, the proceeding must stand or fall by those tests of due process that are applicable to judicial proceedings.

But as the trial Court had found that before the tax judgment and sale the plaintiff had actual knowledge of the description under which the tax officers were proceeding against its property, it was held by this Court that the opportunity to be heard was complete, however legally inadequate the description may have been, and instead of having been denied by law, had been voluntarily waived; that it could not be said of plaintiff, that within the constitution's meaning he had been de-

nied a right to defend, merely because he had not, with the prescribed formalities, been *required* to do so. Whether when viewed in the combined light of the Washington Statute and the general principles of law, the tax judgment and sale were vitiated by jurisdictional defects, this Court was not at liberty to decide. In the Court's opinion, however, beginning with the second sentence and continuing to the bottom of the page, the Court freely concedes the plaintiff's claim as to the legal inadequacy of the pretended description. *Ontario Land Co., vs. Yordy*, 212 U. S. at p. 156.

An analysis of the Yordy opinion, therefore, clearly shows:

1st. *That the only question which this Court deemed within its jurisdiction to determine in that case was, whether the owner under the facts of the case, was deprived of the opportunity to be heard.*

2nd. *That in view of actual knowledge of what property was intended to be taxed, the question of opportunity to be heard was not affected or controlled by rules applicable to certainty of description in tax proceedings in rem.*

3rd. *That in view of such actual knowledge, the question of insufficiency of description, became immaterial, and was involved merely as an abstract question.*

4th. *That because of the limited jurisdiction to review only the federal question as above outlined, the sufficiency of the same description in the tax notice and judgment could not be considered or decided in that case.*

5th. *That the reference by the court to the rule applicable to descriptions in general conveyancing was clearly obiter dictum, and was unnecessary to and did not control the disposition of the case.*

The Court will thus observe that the question of sufficiency of description, in so far as it affects the validity of tax summons, notice and judgment is still open in this Court and was not intended to be passed upon by this Court in the *Yordy* case.

As to the State decision on the sufficiency of description (44 Wash., 239), the conclusion of the Court was not arrived at by the application of any local statute or local rule of property, but by rules of construction of common law, as the Court will see from a casual reading of the opinion. Moreover, the State decision relates to so unique a combination of circumstances, that it surely cannot be regarded as embodying anything worthy to be ranked as a principle of law.

Barber vs. Pittsburg, 166 U. S., 83-100.

Lane vs. Vick, 3 How. 464-476.

Olcott vs. Supervisors, 16 Wal., 678-689.

In all the cases in this court wherein the Court felt bound to follow a particular local rule of law, it will be seen upon consideration that the particular proposition of law had in itself a certain degree of breadth or body by its applicability to combinations of circumstances of a kind already recurring or likely to recur, with some frequency, so it could take rank as a part of the law. The adjudication that by a peculiar clause in his Will, not likely to occur, a testator meant a certain thing, (as in 166 U. S., 83), is more like a finding of fact, or a matter of mixed law and fact, than the definition of a legal principle, and so an adjudication that under certain circumstances, so anomalous as never to have occurred before and never likely to occur again, a certain description is sufficient to charge with notice. In other words, the holding by the state Court that the description was sufficient for all purposes, was an *application* of law to a queer situation, but not the formulation of a rule of law.

Barber vs. Pittsburgh, 166 U. S., 83.

Again the federal Courts are not bound to follow decisions of an unsettled character, nor will they follow inconsistent decisions at the sacrifice of justice and right.

11 *Cyc.*, 902.

The standard applied by the State Court in the Yordy case by which to test in a tax proceed-

ing, the degree of certainty of a description, is certainly in conflict not only with the general law on the subject in all the States where taxes are enforced by proceedings in rem as will be shown in Part III of this Brief, but is also inconsistent with its own later decisions.

In *Miller vs. Daniels*, 92 Pac., 268, (decided in October, 1907), in a tax proceeding like ours, where the property was assessed to one "Mary M. Miller" (the actual owner), by the following description: "25 acres in Section 14, Town 20, Range 3," it was held by Washington Court that the tax proceedings were void, and description fatally defective, although it was shown in lower Court on what 25 acres the appellant Mary M. Miller, had paid the previous taxes. In the Yordy case, it is submitted, the description was much less certain, since it referred to Blocks of land which had no existence in fact and it was only by conjecture that the description could be applied to the land in question.

Again, in *Wick vs. Rea*, 103 Pac., R. 462, the State Court has expressly stated that it has been committed to the doctrine that the summons in tax proceedings must comply strictly with the statute, in order to confer jurisdiction, or the whole proceedings will be void.

The rule of strict compliance was first adapted

in *Thompson vs. Robbins*, 32 Wash., 149, and has been followed in the following cases:

Smith vs. White, 32 Wash., 416.

Dolan vs. Jones, 37 Wash., 180.

Woodham vs. Anderson, 32 Wash.,
503.

Williams vs. Pittock, 35 Wash., 279.

Young vs. Droz, 38 Wash., 649.

Owen vs. Owen, 41 Wash., 644.

Bartels vs. Christenson, 46 Wash.,
478.

Hays vs. Peavey, 102 Pac., 889.

Carney vs. Bigham, 99 Pac. 21.

And in *Welch vs. Beacon*, 93 Pac., 923, (decided Feb. 18, 1908), the Washington Court a year later applied a more stringent standard for testing the degree of certainty of description in the tax summons, than we can find in any other state. The property there involved was "Lot 5 in Block 7 in Syndicate Addition to Seattle," and was so described in the tax summons, but the court held it insufficient because it appeared at the trial that there were in Seattle, besides "Syndicate addition" "Kirkland Syndicate's First Addition to Seattle, and "Kirkland Second Syndicate Addition to Seattle." Just what vitiating effect this could have upon the already complete description, we don't know, but the Court held that it was jurisdiction-

ally insufficient and avoided the tax proceedings. It was there expressly laid down as a rule that the tax foreclosure proceedings is *in rem*, "and the property sought to be affected *must be described with reasonable accuracy* in the proceedings by which it is sought to charge the owner with notice."

The foregoing cases illustrate that in so far as the tax foreclosure summons or citation is concerned, the court has been committed to a stringent standard, even as to the degree of certainty of a description, and it is difficult to perceive upon what ground the State Court wholly relaxed its standard in the Yordy case only. In any event, as the ruling made in that decision is opposed to the common law on the subject, as well as being inconsistent with later decisions of the same Court, and having been applied to a very peculiar combination of circumstances, never again likely to occur, can hardly be ranked as a principle of law which this Court must follow, at the sacrifice of justice and right.

The record conclusively shows that the appellees seek to take away from us property of the value of more than \$32,000.00. (Record, page 41), upon a technical tax title for which they paid \$76.75, which amount, with full interest, has already been repaid by appellants and deposited in Court for their use. (Record, Pages 131, 132), pur-

suant to the tender in the bill and the decision of the Circuit Court (Record, P. 9 and 129-130), and it is no less the duty of the Court to protect the citizen against unnecessary sacrifice of property than it is to enforce payment of a tax, and in a case like this, where, as the Circuit Court remarked, an attempt is made to enforce an "unwarranted confiscation," this Court will not refuse to exert its power to prevent the same, simply because a State decision, totally out of harmony with the rules of law of the same State and of Common law, seems opposed to it.

III.

These lands were not described in the tax proceedings.

Having shown that the question of sufficiency of description is still open for determination in this case, we will now proceed to discuss the same.

The facts relative to this matter of description present the simple question whether the words "Blocks 353 and 373 of the Capitol Addition to North Yakima," can be said to describe, for the purpose of a tax sale, property which, at the time, had never been platted or divided or supposed to be platted or divided into blocks, and which had

never borne either upon any plat or upon any public record, or by the authority of the owner, or by any sort of lay or official usage, either the numbers 353, 373 or any other numbers. Can a tax officer describe the different portions of a large, entire tract, by merely subdividing it in his mind, and affixing to the different imaginary parts such numbers as for any reason he regards as appropriate, without ever condescending to make any record which might enable others to follow the flights of his imagination?

As for the implications alleged to arise from the plat's scheme of consecutive numbering, the utmost that can be claimed for them is, that they make it appear propable that *if* the "Reserved" tract had been originally sub-divided into blocks, and numbered, the numbers 353 and 373 would have been employed. How can this be material when the land was in fact neither sub-divided nor numbered? Nor does it signify that by careful study of the numbers on the plat, one might feel justified in making an **ingenious conjecture as to** the theory upon which the description was probably framed. What assurance could there be of the accuracy of the guess? How could a purchaser be certain whether these fictitious numbers in the tax proceedings were **purposely affixed by the tax** officers to previously unnumbered tracts, or whether, as would seem much more likely, they had been

used by mistake for other numbers such as 393 or 333? Suppose that it should be made to appear that while the tax officer felt justified in affixing the missing numbers to parts of the lands marked "Reserved," he did not feel bound to affix them consecutively or to blocks of the same size as those platted, and so in fact had not applied the numbers as ingenious conjecture might have led one to suppose that he would. Whose numbering would prevail; the conjectural or the official? What assurance could the tax sale purchaser or his remote grantee have, that the tax officer had applied the numbers consecutively, or that the blocks into which in his imagination, he had seen the "Reserved" tract sub-divided, were of the same size as the standard blocks of the addition? What assurance, even now, has the Court, upon these subjects since the proofs are silent respecting them?

The State Court as shown by its opinion, in the *Yordy* case, was enabled to support this alleged description only through the two assumptions, about equally unreasonable, that these numbers would have sufficiently identified the property in a private deed or contract, and that their sufficiency in a tax proceeding is determinable by the same rules as in ordinary conveyancing. The former assumption does not call for discussion, since it is not material here, unless the latter is sound, which manifestly it is not. In a tax pro-

ceeding the description of the lands has the double function of notifying the owner and the public, *i. e.*, all possible purchasers, existing encumbrancers, creditors, etc., exactly what lands are sought to be charged. Descriptive words in a conveyance, when read in the light of circumstances surrounding the parties and their transaction, may often sufficiently identify a tract as the one in fact mutually intended, (which is all that is necessary in such case) though the same words would not adequately identify the land for the purpose of legal notice to third parties, or even to the parties themselves apart from the circumstances of their particular negotiation. The former is a question determinable by the law governing the ascertainment of conventional *intent*; the latter by the law of *notice*.

Moreover in those jurisdictions where the integrity of the law as a moral rather than a drastically logical science is upheld, the standard of certainty enforced by the law of notice becomes more exacting as the hazards of oppression increase, so that in a tax proceeding which aims at the divestment of title *in invitum* in the exercise of a naked statutory power, upon constructive notice, and through the foreclosure of a lien which is always for a mere fraction of a tithe of the property value, amounting as it habitually does, practically to a species of forfeiture, a high degree of

accuracy and certainty are exacted. Of such a proceeding the Supreme Court has said :

“The Court recognizes the correctness of the principle contended for by counsel for the plaintiff in error, that in an *ex parte* proceeding of this kind, under a special authority, great strictness is required. To divest an individual of his property, against his consent, every substantial requisite of the law must have been shown to have been complied with.
* * * * It is not sufficient that a description should be given in the advertisement as would enable the person desirous of purchasing to ascertain the situation of the property by enquiry.”

Ronkendorff vs. Taylor, 4 Pet. 349,
359, 362.

(This case was cited with approval by the Washington Court in *Miller vs. Daniels*, 92 Pac. 268.)

In that case, it was therefore held in harmony with the authorities everywhere, that in a tax proceeding, the description of land as the half of a certain lot assessed to one Taylor was void for uncertainty, and could not be applied to the *undivided* one half which Taylor owned.

In a voluntary conveyance it would on the contrary, undoubtedly have been assumed that Taylor's half being undivided, it was that which he intended to convey.

Baldwin vs. Winslow, 2 Minn. 213.

So the description which in *Bird vs. Benlisa*, 142 U. S. 664, 670 was held inadequate in a tax proceeding would, in view of the facts recited on Page 668, undoubtedly have been held good in a voluntary conveyance.

So in *Stout vs. Mastin*, 139 U. S. 151, 152, where a description in a tax proceeding could easily have been sustained, if contained in a voluntary conveyance, the Court held it void.

This distinction is also involved and shown in following cases:

Tallman vs. White, 2 N. Y. 66.

Hill vs. Mowry, 6 Gray, 551, (cited approvingly in *Stout vs. Mastin*, *supra*.)

Zink vs. McManus, et al 121 N. Y. 259.

Miller vs. Williams, 135 Cal. 183, 185.

Curtis vs. The Board of Supervisors of Brown County, 22 Wis., 167.

The inadmissibility of recourse to argumentative processes or to ingenious inference in order to decipher an alleged description in a tax proceeding, is further illustrated by several decisions in Minnesota, which is one of the few states whose taxes, like those of Washington, are collected through a judicial proceeding *in rem*.

Keith vs. Hayden, 26 Minn. 212, (2 N. W. Rep. 495).

Williams vs. Central Land Co., 32 Minn. 440, (21 N. W. Rep. 550) bears strong points of resemblance to the case at bar. There, the Auditor had been expressly authorized by Statute to make and file plats describing, subdividing and numbering irregular tracts of land, by reference to which plats and numbers, said lands might be described for purposes of taxation. The ownership of a certain quarter section of land having been broken up into irregular tracts, the Auditor caused a survey to be made of it by the County Surveyor and duly filed a plat of the survey. But instead of marking the tract in controversy on the plat as Lot No. 2, it was merely stated in the certificate to the plat that the tract conveyed by Timothy Heald to Frederick Williams, (which was the tract in controversy), is called lot No. 2.

There was thus no difficulty whatever in inferring from data disclosed by public records, that the tax officers *meant* to describe the lands in controversy as lot No. 2. Yet because the number has never been attached to the lot by the owner, and because the Auditor in attempting to affix the number to the lot had not conformed to his statutory authority by affixing the number to the lot upon the face of his plat, it was held that the tract in question had never become lot No. 2 and so was not well described as such.

To appreciate how much further the case goes

than necessary to our position, it must be borne in mind, that in our case the tax officers had no authority whatever to subdivide or number unplatted tracts, and that they made no plat or other record of their subdivision or numbering, so that it is impossible to do more than conjecture that they even meant to attach any numbers to the different parts of our entire, undivided, and unnumbered "Reserved" tract.

To the same effect is 2 *Cooley on Taxation*, (3d. Ed.) p. 935. Black on Tax Titles, § 208.

To the same effect are the following cases:

- Schattler vs. Cassinelli*, 56 Ark., 172.
- Jones vs. Pelham*, 84 Ala., 208.
- People vs. Mahoney*, 55 Cal., 286.
- Greene vs. Lunt*, 58 Me., 518, 534.
- Bidwell vs. Webb*, 10 Minn. 59.
- Jackson vs. Sloman*, 117 Mich., 126.
- Clemens vs. Rannels*, 34 Mo., 583.
- Wooters vs. Arledge*, 54 Tex., 395.
- Jackson vs. De Lancy*, 13 Johns., 552.
- Mitchell vs. Ireland*, 54 Tex. 301.
- Kleber Void Sales*, Sec. 354, and cases cited.

It is submitted, therefore, that the reasoning of the State Court in the *Yordy* case in support of the description is certainly unsound, in so far as it assumes that the question of sufficiency of description is determinable by the rules of construc-

tion applicable to ordinary conveyancing. But the State Court's conclusions in that case are equally unwarranted from the point of view of ordinary conveyancing, assuming that such a view is material here.

Taking the plat of Capitol Addition with the tax deeds, as we must do in order to look for means of identification of the property, it becomes at once apparent, that no such blocks as those in the tax deeds appear upon the face of the plat. The natural inference is that there was an error in the description, but whether the error consists in failing to properly describe some particular property, not designating by numbers on the plat, or whether it lies in giving a wrong number of a block actually numbered on the plat, as for instance blocks 374 and 354, it is impossible to determine from the description given in the deeds. In any event it is obvious that the description is ambiguous and in the absence of other evidence of identification it is conjectural what was intended to be described.

Upon such a state of facts, on the view of ordinary conveyancing what are the applicable rules of law?

Is the Court authorized to resort to oral evidence to supply the defects in the description, or to indulge in inferences or conjectures, as to what was really *intended* to be conveyed in place of the block *actually* described?

To ascertain how far the court may go beyond the deed and plat, in aid of the concededly ambiguous description, the first inquiry is: whether the ambiguity is *patent* or *latent*, and if *patent*, the deed is void, and no resort to extrinsic evidence of identification is permissible.

Jones Law of Real Property and Conveyancing, Sec. 337-336.

Brown vs. Guice, 46 Miss. 299.

Jennings vs. Brizeadine, 44 Mo. 332.

That the ambiguity is *patent* is apparent on slight reflection. The tax deeds contain no other description or means of identification than by mere reference to Capitol Addition. There is nothing in the deeds or the plat to suggest the possibility of locating the land, or point to any source from which evidence may be sought to make the description intelligible. It is not a case, therefore, of *latent* ambiguity, since the **essential elements** of such ambiguity are absent here.

Jones Law of Real Property & Conveyancing, Secs. 339-344.

The ambiguity is clearly *patent on the face of the deed*, because the plat referred to in the deed is as much a part of the deed, as if it were written out upon the face of the deed itself.

Jones Law of Real Property and Conveyancing, Sec. 424.

Delder vs. Volecki, 49 Mo. 98.

Crigin vs. Powell, 128 U. S. 691.

Hardin vs. Jordan, 140 U. S. 371-380.

Applying, therefore, to the deeds in question, the rules of ordinary conveyancing, no evidence of what was intended to be conveyed by the grantor would be admissible to support a description void on its face.

Jones on Real Property and Conveyancing, Sec. 336.

If within this rule the description cannot be aided even by extrinsic proof of what was intended to be conveyed, how much palpably unwarranted is the view permitting resort to inference or conjecture to sustain it, which is exactly what, in the last analysis, has been done by the Court in the *Yordy* case. The opinion of the Court in that case clearly shows, that ingenious *conjecture* is the sole basis by which the impossible description was applied to the property in controversy.

IV.

The lack of description is not cured by the owner's personal knowledge of the tax, whether accidentally derived, or otherwise.

As already noticed, the Washington tax proceeding is purely *in rem*.

Williams v. Pittock, 35 Wash. 271,

Woodward v. Taylor, 33 Wash. 1,

Spokane v. Abitz, 80 Pac. 192.

Carson v. Titlow, 80 Pac. 299.

Allen v. Peterson, 80 Pac. 849.

Dolan v. Jones, 79 Pac. 640.

Rowland v. Eskland, 82 Pac. 599.

And see the Washington Statutes
quoted *infra*.

It is the description in the tax proceedings which constitutes the constructive seizure upon which the proceeding depends for its validity. To argue that personal knowledge of the tax, dispenses with the necessity for a description of the taxed property in the tax proceedings, is like arguing that in Admiralty no seizure is necessary if the owner of the vessel happens to learn in some other way that his craft is being libelled. As constructive notice, if regular, is effective whether resulting in actual notice or not, so if not regular it is abortive no matter how much actual knowledge there may be. In other words, in any proceeding resting upon constructive notice, the presence of actual knowledge is as utterly immaterial as its absence would be. In principle, the contention of the appellee on this point, is even exactly like arguing that in a personal action a defendant who was never summoned or cited, is bound by the judgment because he had otherwise received knowledge that the Court was assuming to proceed against him.

Neither person nor property is subject to the jurisdiction of a Court by mere knowledge on the part of the party or owner, that the court is assuming to act. And the question in hand is, it will be observed, purely a question of *jurisdiction*.

The attempt to cure the absence of seizure or of other forms of constructive notice prescribed by statute, by showing actual knowledge, is like the attempt to support, against constitutional objections, a proceeding for which no notice is prescribed by statute, by showing that notice was nevertheless actually given. In both cases the proposition is to support jurisdiction by showing *extra legal* knowledge or notice, the only difference being that the constructive notice for which actual knowledge is offered as a substitute, is in the one case prescribed by statute, in the other by the constitution. In neither case can this be done.

"It is not enough that the owners may by chance have notice, or that they may as a matter of favor, have a hearing. The law must require notice to them and give them a right to a hearing and an opportunity to be heard."

Stuart vs. Palmer, 74 N. Y., 188, 195.

The R. R. Tax Cases, 13 Fed. 722, 753.

Roller vs. Holly, 176 U. S. 398-409.

So in *Rosendorff vs. Taylor*, 4 Pet. 349, 362, where there was a failure so to describe the prop-

erty taxed as to acquaint purchasers with it, the Court said:

"Nor, if the purchaser at the sale had been informed of every fact necessary to enable him to fix a value upon the property, yet the sale would be void, unless the same information had been communicated to the public through notice. Its defects, if any exist in the description of the property to be sold, which cannot be cured by any communication made to bidders on the day of sale by the auctioneer."

See also:

Brown vs. Denver, 7 Colo. 305.

Mayor vs. Scharf, 54 Md. 517.

State vs. Billings, 55 Minn. 467-475.

Powers v. Larrabee, 49 N. W. 724
(N. D.)

Kuntz vs. Sumption, 117 Ind. 1. (19
N. E. 474.)

V.

But aside from the question of the insufficiency of description, the appellant relied and now relies upon several defects in the tax title which it is claimed avoided the same, and which the Court below seems to have overlooked. They are as follows:

(A.) The tax deeds avoid because no notice of sale was posted or otherwise given as by law required (Par. 25 of the Bill, Page 8, Record). This fact was claimed to be established by failure to prove the posting of such notice by appellees, the burden of proof whereof being on them.

(B.) That the summons and notice as issued and published did not conform substantially to the Statute and was ineffectual to confer jurisdiction. (Page 6 of Record.)

(C.) No complaint or application for the foreclosure of tax lien was filed before publication of summons or entry of judgment, and

(D.) No certificates of delinquency have ever been filed with the Clerk of Court as required by the State Revenue Law.

The Circuit Court of Appeals, in its opinion, passed only upon the last two questions, and for some reason ignored the points as to the sufficiency of summons and tax deed by reason of defects other than the insufficiency of description. We are certainly entitled to be heard upon these propositions, and as to failure to file certificate of delinquency, the Court of Appeals came to the conclusion that the State Court held otherwise, and that its construction of the law was binding upon it, although the Circuit Court of Appeals

admitted in its opinion, that the precise question was never decided by the State Court. (Page 153, 154 of the Record). The Circuit Court made its decision Feb. 4th, 1908, in which it held that pursuant to the great weight of authority, the filing of a certificate of delinquency was the initial step in legal proceedings to foreclose a tax lien, and was jurisdictional. (Page 127-130 Record). At the time of the Circuit Court's decision, the State Court had never passed upon that precise question and the case of *Miller vs. Henderson*, 50 Wash., 200, was not decided until Aug. 6, 1908, and long after the Circuit Court had jurisdiction in this case, and had otherwise decided.

We therefore respectfully submit that the motion to affirm be likewise denied and the cause be heard upon its merits.

A. L. AGATIN,
Solicitor for Appellant.

WILLIAM W. BILLSON,
Of Counsel.

sion of which can in no way affect the rights of the property holder, does not amount to denial of due process of law.

The tax laws of the State of Washington involved in this case are clear and simple in their requirements; and the judgment of the Supreme Court of that State attacked in this suit did not deprive plaintiff in error of his property without due process of law, either because of lack of compliance with the statute or of sufficiency of notice to the owner or description of the property. *Ontario Land Co. v. Yordy*, 212 U. S. 152.

Where a decision is based on two grounds either of which is sufficient to sustain it, neither is *obiter*. *Union Pacific R. R. Co. v. Mason City R. R. Co.*, 222 U. S. 237.

171 Fed. Rep. 51, affirmed.

THE facts, which involve the validity under the Fourteenth Amendment of certain tax proceedings in the State of Washington, are stated in the opinion.

Mr. Arcadius L. Agatin, with whom *Mr. William W. Billson* was on the brief, for appellant:

Lack of adequate description renders tax titles void and the question is not foreclosed by former decisions. *The Ontario Land Co. v. Yordy*, 212 U. S. 152; 44 Washington, 239, does not control this case.

The question in the *Yordy Case* did not depend upon the sufficiency of description at all, and that question was not involved, except as an abstract question. In this case the question of description is vital, as a question of jurisdiction and not as a question of due process.

The Washington tax proceeding is purely *in rem*. The divestment of title through such a proceeding is manifestly impossible without a description of the property affected.

The tax summons, notice, judgment and tax deeds are absolutely void for want of description.

Jurisdictional and other defects render tax judgment and deeds null and void. The judgment is void because of failure to file application.

By § 4878, Bal. Code, under which service was at-

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Argument for Appellant.

tempted to be made in the tax proceedings here involved, the requirement for filing the complaint before publication is jurisdictional. *Barber v. Morris*, 37 Minnesota, 194; *Murphy v. Lyons*, 19 Nebraska, 689; 28 N. W. Rep. 328; *Anderson v. Coburn*, 27 Wisconsin, 558; *Witt v. Meyer*, 69 Wisconsin, 595; 17 Ency. Pl. & Pr. 51-56; Kelber, Void Judicial Sales, § 122; 35 N. W. Rep. 25; 61 Wisconsin, 185; 99 Missouri, 638; *McManus v. Morgan*, 80 Pac. Rep. 786; *Klenk v. Byrne*, 143 Fed. Rep. 1008.

Failure to file certificate of delinquency was fatal to jurisdiction. *Barber v. Morris*, 37 Minnesota, 194; 33 N. W. Rep. 559; *Galpin v. Page*, 18 Wall. 350.

The tax judgment is void for want of jurisdiction, because the tax summons is not in conformity to law. The summons does not inform the defendants that any complaint was filed in court, or that it was filed at all. In tax foreclosure proceedings, the form of summons and its contents must conform to § 4878, Bal. Code. *Williams v. Pittock*, 35 Washington, 271; *Woodham v. Anderson*, 32 Washington, 500; *McManus v. Morgan*, 80 Pac. Rep. 786; *Bartels v. Christianson*, 90 Pac. Rep. 658.

The failure in the summons to state that the complaint has been filed is a substantial departure from the statutory requirements for a summons, and, therefore, the court acquired no jurisdiction to enter judgment and the judgment entered thereon is wholly void. *Brown on Jurisdiction*, § 41; *Wade's Law of Notice*, 2d ed., § 1030; 26 Am. & E. Ency. Law, p. 692; *Sutherland on Statutory Const.* 454-455; *Maxwell on Interpretation of Statutes*, 333-337; *Blackwell on Tax Titles*, 287, 288; *Odell v. Campbell*, 9 Oregon, 298, 305; *Lynam v. Milton*, 44 California, 630; *Hayes v. Lewis*, 21 Wisconsin, 663; *Kendell v. Washburn*, 14 How. Pr. 380; *Durham v. Betterton*, 79 Texas, 223; *Fernekes v. Case*, 75 Iowa, 152; *Black v. Clendinin*, 3 Montana, 44; *Caulkins v. Miller*, 55 Nebraska, 601; *Delaware v. Bank*, 77 S. W. Rep. 628 (Tex.); 20 Ency.

Pl. & Pr. 1115; *Cleffern v. Tomlinson*, 62 Minnesota, 197.

The judgment is void because the summons required answer "within 60 days after first publication" instead of "within 60 days after the date of the first publication." *Woodham v. Anderson*, 32 Washington, 500; *Thompson v. Robbins*, 32 Washington, 149; *Bailey v. Hood*, 80 Pac. Rep. 559; *Dolan v. Jones*, 79 Pac. Rep. 640; *Young v. Droz*, 80 Pac. Rep. 810.

The tax deeds are void because no notice of sale was posted or otherwise given as required by statute under which the deeds were executed. Bal. Code, § 1756. This requirement is mandatory, and the failure to observe it makes the sale void. *Martin v. Barbour*, 140 U. S. 634; *McCord v. Sullivan*, 80 N. W. Rep. 989; *Olson v. Bagley*, 37 Pac. Rep. 37; *Sweigle v. Gates*, 84 N. W. Rep. 481; *Blackwell v. First National Bank*, 63 Pac. Rep. 43; *Baumgardner v. Fowler*, 34 Atl. Rep. 537; *Olson v. Phillips*, 80 Minnesota, 339; *Rustin v. Merchants, &c.*, 47 Pac. Rep. 300; *Alexander v. Gordon*, 101 Fed. Rep. 91, 96; Black on Tax Titles, 205; 2 Cooley on Taxation, 928-930 (3d ed.).

The record in the case at bar is entirely silent as to notice of the sale being posted. This being so, the fact should be deemed established that there was no such notice, because the burden is on the tax purchaser to show that the notice was posted, and objection to their introduction in evidence on that ground should be sustained. *Williams v. Peyton*, 4 Wheat. 77; *Ransom v. Williams*, 2 Wall. 313; *State v. Inhabitants*, 52 Atl. Rep. 238; Black on Tax Titles, 2d ed., §§ 346, 443; 2 Cooley on Taxation, 915, 916.

The burden of proof as to notice of sale is not changed by Bal. Code, § 1767, *supra*.

This statute only makes the tax deed evidence of the proceedings at the sale; such as, that the sale was on Saturday, that it was at public auction and to the person offer-

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ing to pay the amount for the least quantity of land, that it was between the hours of 9 a. m. and 4 p. m., etc. The rule of evidence provided by the statute quoted does not relate to any proceedings prior to the sale. 2 Cooley on Taxation, 3d ed., 1006; *Wilson v. Lemon*, 23 Indiana, 433; *Breeman v. Bingham*, 5 N. Y. 366; *Westbrook v. Willey*, 47 N. Y. 458; *Carpenter v. Shinnars*, 41 Pac. Rep. 473 (Cal.); *Kepley v. Fouke*, 58 N. E. Rep. 303 (Ill.); *King v. Cooper*, 38 S. E. Rep. 924 (N. Car.); *Johnson v. Harper*, 18 So. Rep. 198 (Ala.); *Carnham v. Sieber*, 82 Pac. Rep. 592 (Colo.); *Pelham v. Beggs*, 72 Pac. Rep. 1077 (Colo.); *Ayer v. Dillard*, 33 So. Rep. 714 (Fla.).

Mr. Benjamin S. Grosscup, with whom *Mr. Ira P. Elehart* was on the brief, for appellees.

MR. JUSTICE McKENNA delivered the opinion of the court.

Suit to quiet title to certain real estate situate in North Yakima, State of Washington, against certain tax deeds issued to appellees by the county treasurer of Yakima County.

It was brought in the Circuit Court for the Eastern District of Washington, Southern Division. A decree was entered in favor of appellant. 162 Fed. Rep. 999. It was reversed by the Circuit Court of Appeals. 171 Fed. Rep. 51.

The case depends upon the sufficiency of the tax deeds which appellant assails in its bill, after averments of diversity of citizenship, alleging the following: The land is part of Capitol Addition to North Yakima and is designated on a plat thereof as "Reserved." It appears from the plat which is attached to the bill that the tract is surrounded by blocks, the lines of which and of the streets, if extended over the tract, would constitute it

blocks 352, 372, 353 and 373. The "Reserved" was platted as Herman's Addition and a plat duly recorded in the office of the county recorder of Yakima County on the eighth of December, 1904, and since the execution and recording of the plat the "Reserved" has not been otherwise known or designated than by lots and blocks, according to the recorded plat. Before the recording of the plat the "Reserved" tract was not known or designated by any other than that name, and as a matter of fact there were not upon the map blocks or lots designated as blocks 352, 372, 353 and 373, nor any block or parcel of land to which such description could be made to apply, and, it is averred that, therefore, the description in the tax proceedings were utterly void on its face for the reason that it does not describe any land.

In 1901 Yakima County commenced proceedings in the Superior Court of Yakima County, the county being plaintiff and Edward Whitson and a large number of other persons were named as defendants, which included, among other lands, blocks 352, 353, 372 and 373, Capitol Addition to North Yakima. The proceedings purported to be under the laws of Washington for the foreclosure of tax liens and culminated in a judgment and tax deeds. A pretended summons and notice were issued and published, but neither appellant nor any person was ever made or named a party defendant in the proceedings, either in the application for judgment or in the tax summons or notice as filed or published nor in the tax judgment, and the owners of the blocks were designated as "unknown." The judgment was entered by default, and neither appellant nor any other person ever appeared or answered in the proceeding.

Appellees' claim of title rests exclusively on the tax judgment and deeds and is based upon a certain decision of the Supreme Court of the State in a case in which appellant was plaintiff and one Jay Yordy et al. were

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defendants, which case involved lands within the tract designated "Reserved" herein, the decision of which was based "upon pretended principles of law which the court in that case applied in palpable violation of the provisions of the Fourteenth Amendment of the Constitution of the United States."

It is alleged that by the 'law of the land' in order to constitute a proper and legal notice under the Fourteenth Amendment it is necessary that in a tax proceeding *in rem* the description of the property sought to be sold must be so full and clear as to disclose to persons of ordinary intelligence, without resort to inferences, what property is thus intended to be taken. It is further alleged that the notice in the tax proceedings had not that sufficiency and that, hence, to hold the judgment and deeds valid would deprive appellant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. The protection of the Amendment is claimed "and that because of the aforesaid unconstitutional decision of the State Supreme Court, the principles of which, if applied here, may deprive your orator of its property in violation of the said Fourteenth Amendment, your orator invokes the protection of said article in this case, and hereby claims protection thereunder against the pretended claims of said defendants" (appellees).

There are other allegations, to the following effect: The judgment and tax deeds are void, because the court was without jurisdiction of the proceedings because the notice of summons does not contain the specification of process, notice or summons as required by the laws of Washington, either in form or substance; that the summons was never served except by a pretended publication, and that neither it nor the application for judgment or complaint for the foreclosure of the tax liens was ever filed in the office of the clerk of the Superior Court; that

no certificate of delinquency upon which the proceedings were based was ever filed in that court as required by the laws of Washington, and that no complaint or application for judgment was ever filed in the office of the clerk of the court until the day of the entry of judgment.

That no notice of sale was ever given or posted as required by law, and that the sale by the county treasurer of block 373 for \$76.77 and block 353 for \$76.77 was wholly unauthorized by the judgment and in excess of his authority; that appellant is willing and has offered to pay into court the amount of taxes assessed against the property which may be found to be justly due. A copy of the decision of the State Supreme Court in the *Yordy Case* is attached to the bill.

The answer of appellees denied the allegations of the bill, and set up title under the tax proceedings and the sale and deed thereunder.

They alleged that the land, by the description of blocks, was taxed for state, county and municipal purposes for several years prior to September, 1902, and that the taxes being delinquent on said blocks, the county of Yakima filed in the office of the clerk of the county its summons, notice and petition to foreclose the tax lien of the county, the case being entitled, *Yakima County, State of Washington, Plaintiff, v. Edward Whitson et al., Defendants*, and duly published the same "by law made and provided." That thereafter, such proceedings being had, a judgment and decree was entered foreclosing the tax lien, the court adjudging the land subject to taxation, and that the taxes due upon it were delinquent, and directed the land to be sold.

It is alleged that the judgment was duly filed for record in the office of the clerk and recorded, and that the county treasurer gave notice of sale and sold the property, as required by law, to appellees, and executed a deed therefor to them.

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It is further alleged that appellant had not paid taxes on the land for many years, knew that taxes thereon were delinquent, knew of the fact of assessment, and all the subsequent proceedings and sale, "and permitted the same to be conducted without making any objection whatsoever," and is therefore estopped to claim any interest against appellees.

A motion is made to dismiss, on the ground that the bill is based on diversity of citizenship, that the decision of the Circuit Court of Appeals decided the case on questions of state and general law, and that the only question of a Federal nature has been decided by this court adversely to appellant in *Ontario Land Co. v. Yordy*, 212 U. S. 152, "thereby removing from the consideration of the Circuit Court of Appeals any substantial Federal question."

The motion is denied. The bill attacks the constitutionality of the state law as applied by the Supreme Court of the State, and whether the *Yordy Case* applies runs into the merits.

It will be observed that as grounds of suit the following propositions are presented by the bill: (1) The insufficiency of the description of the land, it never having been known as lots and blocks but designated or marked on the plat of Capitol Addition as "Reserved," and always known and designated as such. (2) The court acquired no jurisdiction of the property because the notice of summons was void on its face, for the reason that it did not contain the specifications of process, notice or summons in such cases required by the laws of Washington, and did not comply with the statute either in form or substance. (3) There was no service of summons except by publication, but that prior to the publication neither the summons nor the application for judgment nor the complaint was ever filed in the office of the clerk of the Superior Court. (4) No certificate of delinquency was filed in the office of the clerk of the

court as required by the laws of Washington, and no complaint or application for judgment until the day of entry of the judgment. (5) No notice of sale under the judgment was ever given or posted as required by law, and that the sale was in excess of the authority of the county treasurer.

All these propositions but the first rest upon the contention that the laws of Washington were not complied with in the particulars mentioned. For instance, it is contended that the certificate of delinquency was not filed in the office of the clerk of the court and no complaint or application for judgment until the day of the entry of judgment. This is the most important of the contentions, and we will first dispose of it.

The laws of Washington provide that any day after taxes are delinquent the treasurer of the county shall have the right and it is his duty upon demand and payment of the taxes and interest to issue a certificate of delinquency against such property, the holder of which may at any time after the expiration of three years give notice to the owner of the property that he will apply to the Superior Court of the county in which the property is situated for a judgment foreclosing a lien against the property. The contents of the notice and the time for appearance are prescribed, and the county attorney is directed to furnish forms to the certificate-holder.

After the expiration of five years from the date of delinquency if no certificate has been issued the county treasurer is required to issue certificates of delinquency to the county and file the certificates with the clerk of the court, and the treasurer shall thereupon, with the assistance of the county prosecuting attorney, proceed to foreclose in the name of the county the tax liens embraced in such certificates, and the same proceedings shall be had as when the certificates are held by individuals.

Summons may be served and notice given exclusively

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by publication in one general notice describing the property as the same is described in the tax rolls. The certificates of delinquency may be general, including all property, the proceedings to foreclose may be brought in one action, and unknown owners, described as such, and all persons owning or claiming the property are required to take notice of the proceedings and of all steps thereunder. And it is provided that the court shall examine each application for judgment for foreclosing the tax lien, hear and determine the matter in a summary manner without other pleading and pronounce judgment as the right of the case may be, for the taxes, penalties, interest and costs, "and such judgment shall be a several judgment against each tract." Ballinger's Code, §§1749 *et seq.*

The certificate of delinquency was not filed. It was issued as required by law, and a summons was published and notice given that judgment would be applied for. The application was subsequently made and judgment rendered. This is shown by the judgment roll in the tax proceedings which was introduced in evidence. The application for judgment, after the title of the court and parties, set forth the following:

"Yakima County, plaintiff in the foregoing entitled action, by Wm. B. Dudley, its treasurer and legal representative, respectfully relates as follows:

"That it is the holder of Certificate of Delinquency issued on the 31st day of January, A. D. 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with penalty, interest and costs thereon, upon real property situate in said county, assessed to the defendants herein for the years and in the amount hereinafter stated.

"That no redemption of said property has been made, and there is now due plaintiff herein on said certificate of delinquency the amounts set forth below, following each description, marked 'total.'"

ONTARIO LAND COMPANY *v.* WILFONG.

**APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.**

No. 160. Argued January 24, 1912.—Decided February 26, 1912.

Where the bill attacks the constitutionality of the state law as applied by the state court, and the application of a case heretofore decided by this court runs to the merits, the motion to dismiss will be denied. The refusal of the courts of the State to consider as essential to proceedings to foreclose tax liens certain ministerial duties, the omis-

In the description is the property in suit, assessed to unknown owners.

Foreclosure of the lien was prayed, and that judgment be given against each piece of property.

It also appears from the judgment roll that summons for publication was issued which recited that the county held certificate of delinquency; that the taxes were delinquent, time for appearance designated to defend the action or pay the amount due, and it was stated that in case of "failure so to do," judgment would be rendered foreclosing the lien. Judgment was subsequently entered and the property ordered to be sold. The judgment states as follows:

"This cause having this 2d day of September, 1902, been brought to be heard upon the application for judgment foreclosing tax lien filed herein, and the defendants and each of them having been duly served with notice as by law required, and no appearance having been made by said defendants, or either of them, and upon the proofs adduced, it appearing to the Court that the statements and allegations set forth in said application are true, the Court finds as follows:

"That the plaintiff herein is the owner and holder of Certificate of Delinquency issued on the 31st day of January, 1898, by the County of Yakima, State of Washington, the same being for taxes then due and delinquent, together with penalty interest and costs thereon, upon real property situate in said County, assessed to the defendants herein for the years and in the amount hereinafter stated. That more than five years have elapsed since the original date of delinquency of the taxes for the year 1895, which are included in said certificate of delinquency."

But it is objected that it does not appear that the certificate of delinquency was filed by the county treasurer with the clerk of the court, and that the omission is fatal to the validity of the proceedings.

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To the contention the Court of Appeals answered that the filing of the certificate was directory, not mandatory, and, therefore, not jurisdictional, and to sustain this position cited *Washington Timber & Loan Co. v. Smith*, 34 Washington, 625. In that case the validity of foreclosure proceedings was attacked on the ground, among others, that the certificate of delinquency was not filed in the clerk's office before publication of summons, and it was hence argued that the court had not acquired jurisdiction of the property. The court, in the foreclosure proceedings, made a *nunc pro tunc* order declaring that the certificates were, in fact, filed before the first publication of summons and not at the time the file mark upon the certificate showed. The Supreme Court decided that the issue of the certificate was the essential thing and gave the court jurisdiction of the cause, and, having jurisdiction, and it appearing by the record that the certificates were filed in time, it followed that the point now raised related to a mere irregularity, which should have been raised in the foreclosure case. The court also ruled that the correction was one that could be made during the progress of the action, and that, therefore, the appellant in the case was estopped to raise the objection in the Appellate Court. The court finally observed: "The summons and its publication, we think, complied with the law. The property owner was, therefore, within the jurisdiction of the court, and was required to take notice of the action. The summons was by publication, it is true, but under § 3, pp. 385, 386, Laws of 1901, 'all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of said proceedings, and of any and all steps thereunder.'"

The language of the court, it must be admitted, is not as precise in distinguishing the elements of its decision as one would like, but we think the ground of its ruling is that jurisdiction having been obtained by the issue

of the certificate and the publication of the summons, the omission to file the certificate in the clerk's office is a defect or irregularity to which objection must be made in the case. In other words, the filing is not jurisdictional, for the court expressed the view that the "delinquency thought to be fatal" (the omission to file the certificate) ". . . could in no manner affect the rights of the appellants" in the action. The conclusion is reasonable. It would yield too much to technicality to give to the omission to file the certificate the controlling effect contended for by appellant. We have seen that the certificate was exhibited to the court and constituted one of the grounds of judgment.

As remarked by Judge Gilbert, speaking for the Court of Appeals: "The revenue and taxation law of Washington is exceptionally lenient to the delinquent taxpayer, and offers him unusual protection in providing that his property may not be sold for delinquent taxes except upon foreclosure proceedings and after a long period of delinquency; three years in the case of foreclosure by an individual certificate holder . . . and five years in the case of foreclosure by the county." In both cases there is public notice given and proceedings in court, time and opportunity enough, we think, even to an accidental or negligent omission to pay taxes, and more than enough to the calculated and culpable delinquency charged against appellants in this case.

The courts of the State have refused to consider as essential to the proceedings in court to foreclose the lien for the taxes the omission of some merely ministerial duty of an officer which in no way could affect the rights of the property owner. *Miller v. Henderson, supra*, and *Smith v. Newell*, 32 Washington, 369.

In this connection we may observe that the proceedings in this case are the same as those passed on in *Ontario Land Co. v. Yordy*, 44 Washington, 239; 212 U. S. 152. It was

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contended there, as here, that the proceedings were void because of the failure to file the certificate of delinquency. The Supreme Court of the State declined to consider the contention, holding that it was not open, as the land company had not tendered the delinquent taxes as required by the laws of the State. In this court it was not explicitly urged except in a petition for rehearing. The rehearing was not granted.

The other objections to the validity of the tax proceedings are presented in the briefs of appellant under two heads as to the judgment and one as to the deeds, as follows: (1) The judgment is void because of failure to file the application until the day of the entry of the judgment. (2) The judgment is void for want of jurisdiction because the summons did not inform the defendants in the proceedings "that any complaint was filed in court, or that it was filed at all." (3) The tax deeds are void because no notice of sale was posted or otherwise given.

These grounds of objection are untenable. The laws of Washington are as clear as they are simple in their requirements. They do not require a complaint to be filed before the publication of summons, but provide for an application for judgment after the publication of summons, and the court is explicitly directed to examine the application and to "hear and determine the matter without other pleading." There is a careful avoidance of complexity and expense. The property is proceeded against, and the procedure is made simple. The certificates of delinquency may be issued in one general certificate in book form and unknown owners may be proceeded against as such. And it is provided that all persons owning or claiming to have an interest in the property are "required to take notice of the said proceedings and of any and all steps thereunder." See *Williams v. Pittock*, 35 Washington, 271.

It is, however, contended that the Supreme Court of Washington has decided that § 4878 of Ballinger's Code is

applicable to tax proceedings and that it requires "that publication of summons shall not be had until after the filing of the complaint." And it is hence contended that the filing of the complaint before publication is jurisdictional.

The Supreme Court of the State has not decided as contended. It has decided exactly the other way. Indeed, it has held that if there were a total omission to file a complaint the judgment would not be void. *Snohomish Land Co. v. Blood*, 40 Washington, 626. *McManus v. Morgan*, 38 Washington, 528, 80 Pac. Rep. 786, and *Bartels v. Christensen*, 46 Washington, 478, 90 Pac. Rep. 658, are not apposite, being constructions of the statute before its amendment in 1901.

In this connection is urged the very technical objection that "the summons required answer 'within 60 days after the first publication' instead of 'within 60 days after the date of the first publication.'" To sustain this objection *Williams v. Pittock*, *supra*, is cited. It does not sustain the objection. It would be surprising if it did.

The objection to the validity of the deeds is also without merit. Under the laws of the State a tax deed is *prima facie* evidence, not only of the validity of the deed and order under which the sale was made, but also of the regularity of the prior proceedings. *Warren et ux. v. Oregon & W. R. R. Co.* (C. C. A. Ninth Circuit), 176 Fed. Rep. 336, and cases cited.

This brings us to the first proposition of appellant, that is, the insufficiency of the description of the land in the certificate of delinquency and in the summons, judgment and order of sale, and that therefore they were inadequate for notice and due process of law. This contention, however, was considered in *Ontario Land Company v. Yordy*, *supra*, and decided adversely to appellant.

As we have seen, the proceedings in that case were those involved in this. It was held that the company was

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charged with notice of the platting and the condition shown by the plat of the Capitol Addition to North Yakima, that he had notice from the records of the listing and assessment for taxation of the blocks 352, 353, 372 and 373, and that they would occupy the place marked upon the official plat as "Reserved." The company also "had notice," it was said, "that the track marked 'Reserved' was not otherwise listed or assessed for taxation," and that the blocks "were used by the authorities for describing the 'Reserved' tract." The presumption of knowledge thus arising was fortified, it was said, by actual knowledge "that the authorities were attempting to assess and tax this 'Reserved' tract under the description of blocks 352, &c." Both were grounds of decision. In other words, the decision was not based alone on actual knowledge of what property was intended to be taxed, but upon the sufficiency of the description to identify the land in connection with the notice given to appellant by the record. And this was not *obiter*. *Union Pacific R. R. Co. v. Mason City R. R. Co.*, 222 U. S. 237.

A like presumption exists in the case at bar, and there is testimony of like actual knowledge.

Judgment affirmed.